

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:10-cr-522  
5 Plaintiff, - Toledo, Ohio  
6 v. - September 9, 2011  
7 ALEX DAVID COOK, - Trial  
8 Defendant. -  
-----

9  
10 VOLUME 5  
11 TRANSCRIPT OF TRIAL  
12 BEFORE THE HONORABLE JAMES G. CARR  
13 UNITED STATES DISTRICT JUDGE, AND A JURY

14 APPEARANCES:

15 For the Plaintiffs: United States Attorneys' Office  
16 By: Thomas O. Secor  
17 Gene Crawford  
18 Four SeaGate, Suite 308  
19 Toledo, OH 43604  
20 (419) 259-6376

21 For the Defendant: Elizabeth Kelley  
22 Suite 285  
23 13938 A Cedar Road  
24 Cleveland, OH 44118-3204  
25 (216) 410-6923

Court Reporter: Tracy L. Spore, RMR, CRR  
1716 Spielbusch Avenue  
Toledo, Ohio 43624  
(419) 213-5520

Proceedings recorded by mechanical stenography,  
transcript produced by notereading.

1 (Reconvened at 8:40 a.m.)

2 THE COURT: Ready to go?

00:00:02 3 MS. KELLEY: Yes, Your Honor.

00:00:03 4 THE COURT: I'm embarrassed to tell you,  
00:00:06 5 you're supposed to renew your Rule 29 motion to renew  
00:00:10 6 your rights.

00:00:11 7 MS. KELLEY: I thought about that last  
00:00:13 8 night. Theoretically I should have done that at the  
00:00:16 9 end. I could do it again this morning for purposes of  
00:00:19 10 the record.

00:00:19 11 THE COURT: Nothing's happened in between.

00:00:23 12 MS. KELLEY: For purposes of the record,  
00:00:24 13 Your Honor, I'd like to renew our Rule 29 motion.

00:00:29 14 THE COURT: I'll take it under advisement.

00:00:31 15 MS. KELLEY: Also, could the government and  
00:00:33 16 I approach you at sidebar? There's one matter before  
00:00:38 17 the jury.

00:03:16 18 (Whereupon the following discussion was had  
00:03:16 19 at the bench:)

00:03:16 20 MS. KELLEY: I just wanted to clarify matter  
00:03:16 21 in case anyone comes forward later. Last night when I  
00:03:16 22 exited the courthouse to the parking lot across the  
00:03:16 23 street, I could see juror number -- I believe 7 is the  
00:03:16 24 woman with the red hair. And she was on her cell phone.  
00:03:17 25 She was frantically gesturing. And then as I was

00:03:17 1 crossing the street a tow truck came along. She looked  
00:03:17 2 very, very distressed. And I said to her, would you  
00:03:17 3 like me to call the Judge's bailiff to provide some  
00:03:17 4 assistance? And she said, no, everything was all right.  
00:03:18 5 At that point I moved. But I wasn't having any ex  
00:03:18 6 parte --

00:03:18 7 THE COURT: I understand.

00:03:18 8 MS. KELLEY: In case anyone saw.

00:03:18 9 THE COURT: That's quite appropriate.

00:03:18 10 (End of sidebar discussion.)

00:03:18 11 THE COURT: Any problem with the  
00:03:18 12 instructions?

00:03:18 13 MR. SECOR: Other than page 27. We've  
00:03:19 14 already hashed that around.

00:03:19 15 THE COURT: Ms. Kelley, any problem with the  
00:03:19 16 instructions?

00:03:19 17 MS. KELLEY: No, I gave my comments to Amy  
00:03:19 18 last night.

00:03:19 19 THE COURT: I believe I was able to  
00:03:19 20 incorporate everything into the final version. If you  
00:03:19 21 note something when you read along with me, if you see  
00:03:19 22 something, give a holler; we'll stop and fix it. It's  
00:03:22 23 my experience no matter how hard you try, there's always  
00:03:31 24 some glitch.

00:03:36 25 (Jury enters the courtroom.)

00:04:24 1 THE COURT: Good morning. You can be  
00:04:25 2 seated. Each of you should have on your chairs there a  
00:04:29 3 copy of the instructions which I'm about to read. As I  
00:04:33 4 said before I read the initial instructions, I would  
00:04:39 5 encourage you to read along, but I would also ask that  
00:04:42 6 you not read ahead. Just follow along. You can mark  
00:04:48 7 them up. If you don't care to read along, that's fine;  
00:04:51 8 You can just listen to the instructions.

00:05:01 9 Members of the jury, I will now instruct you  
00:05:04 10 about the law that you must follow in deciding this  
00:05:07 11 case.

00:05:08 12 First, I will explain your duties the and  
00:05:12 13 the general rules that apply in every criminal case.

00:05:15 14 Then I will explain the elements, or parts,  
00:05:18 15 of the crimes that the defendant is accused of  
00:05:21 16 committing. The government must prove each element  
00:05:26 17 beyond a reasonable doubt for you to return a guilty  
00:05:29 18 verdict; if it does not, you must return a not guilty  
00:05:34 19 verdict.

00:05:35 20 Then I will explain some rules that you must  
00:05:38 21 use in evaluating particular testimony and evidence.

00:05:41 22 And last, I will explain the rules that you  
00:05:45 23 must follow during your deliberations in the jury room,  
00:05:48 24 and the possible verdicts that you may return.

00:05:51 25 Although you have your own written copy of

00:05:54 1 the instructions, which you will have with you in the  
00:05:57 2 jury room, please listen carefully to everything I say.

00:06:02 3 Jurors' duties. You have two main duties as  
00:06:07 4 jurors. The first is to decide what the facts are from  
00:06:12 5 the evidence that you see and hear in court. Deciding  
00:06:16 6 what the facts are is your job, not mine; nothing I say  
00:06:22 7 or do during this trial is meant to influence your  
00:06:26 8 decision about the facts.

00:06:28 9 Your second duty is to take the law that I  
00:06:33 10 give you, apply it to the facts, and decide if the  
00:06:38 11 government has proved the defendant guilty beyond a  
00:06:42 12 reasonable doubt. It is my job to instruct you about  
00:06:46 13 the law, and you are bound by the oath that you took at  
00:06:50 14 the beginning of the trial to follow my instructions,  
00:06:53 15 even if you personally disagree with them. This  
00:06:58 16 includes the instructions that I gave you before and  
00:07:01 17 during the trial, and these instructions. All  
00:07:05 18 instructions are important, and you should consider them  
00:07:09 19 together as a whole.

00:07:11 20 I do want simply to remind you in the event  
00:07:18 21 you detect any variance between the instructions that I  
00:07:22 22 give you at the outset and these instructions, these  
00:07:25 23 instructions are the ones you are to follow. I made a  
00:07:29 24 couple -- a few changes, and I don't think, quite  
00:07:35 25 candidly, they affect the substance of the instructions,

00:07:38 1 but just so that you're clear, if you recall any  
00:07:42 2 variance between what I told you when the trial began  
00:07:45 3 and what I am telling you today, these are the  
00:07:48 4 instructions that control your deliberations.

00:07:52 5 The lawyers may refer to the law during  
00:07:57 6 their opening statement and closing arguments. If what  
00:08:01 7 they say differs from what I tell you about the law, you  
00:08:05 8 must follow what I say. What I say about the law  
00:08:08 9 controls.

00:08:09 10 Perform these duties fairly. Do not let any  
00:08:14 11 bias, sympathy, or prejudice that you may feel toward  
00:08:18 12 one side or the other influence your decision in any  
00:08:25 13 way.

00:08:25 14 Presumption of innocence, burden of proof,  
00:08:29 15 reasonable doubt.

00:08:31 16 An indictment is not any evidence at all of  
00:08:37 17 guilt. It is just the formal way that the government  
00:08:42 18 tells the defendant what crimes it accuses the defendant  
00:08:45 19 of committing. But an indictment alone does not even  
00:08:50 20 raise any suspicion of guilt.

00:08:52 21 The defendant starts the trial with no  
00:08:56 22 evidence at all against him. The law presumes he is  
00:09:00 23 innocent. This presumption of innocence stays with the  
00:09:05 24 defendant unless and until the government presents  
00:09:10 25 evidence sufficient to overcome the presumption and

00:09:14 1 convince you beyond a reasonable doubt that he is  
00:09:19 2 guilty.

00:09:19 3 This means the defendant has no obligation  
00:09:23 4 to present any evidence at all or to prove to you in any  
00:09:28 5 way that he is innocent. The government has the burden  
00:09:32 6 of proving that he is guilty. This burden stays on the  
00:09:36 7 government from start to finish. You must find the  
00:09:40 8 defendant not guilty unless the government convinces you  
00:09:45 9 beyond a reasonable doubt that he is guilty.

00:09:50 10 The government must prove every element of  
00:09:53 11 the crimes charged beyond a reasonable doubt. Proof  
00:09:58 12 beyond a reasonable doubt does not mean proof beyond all  
00:10:06 13 possible doubt. Possible doubts or doubts based purely  
00:10:10 14 on speculation are not reasonable doubts. A reasonable  
00:10:14 15 doubt is a doubt based on reason and common sense. It  
00:10:20 16 may arise from the evidence, the lack of evidence, or  
00:10:23 17 the nature of the evidence.

00:10:26 18 Proof beyond a reasonable doubt means proof  
00:10:31 19 which is so convincing that you would not hesitate to  
00:10:35 20 rely and act on it in making the most important  
00:10:39 21 decisions in your own lives. If you are convinced that  
00:10:44 22 the government has proved the defendant guilty beyond a  
00:10:47 23 reasonable doubt, say so by returning a guilty verdict.  
00:10:52 24 If you are not so convinced, say so by returning a not  
00:10:58 25 guilty verdict.

00:11:01 1 Evidence defined.

00:11:04 2 You must base your decision only on the  
00:11:08 3 evidence that you saw and heard, including the exhibits  
00:11:13 4 which will be with you in the jury room. Do not let  
00:11:16 5 anything else that you may have seen or heard influence  
00:11:20 6 your decision in any way.

00:11:22 7 The evidence in this case includes only what  
00:11:26 8 the witnesses said while they were testifying under oath  
00:11:30 9 and the exhibits allowed into evidence.

00:11:33 10 Nothing else is evidence. The lawyers'  
00:11:37 11 statements and arguments are not evidence. Their  
00:11:41 12 questions and objections are not evidence -- what the  
00:11:45 13 witnesses say in response to those questions is  
00:11:48 14 evidence. My legal rulings are not evidence. And my  
00:11:53 15 comments and questions are not evidence.

00:11:56 16 If I have sustained an objection, or if a  
00:12:01 17 question was withdrawn, you must disregard the question  
00:12:04 18 and answer, if any, to the question. Do not speculate  
00:12:10 19 about what an answer might have been where I sustained  
00:12:14 20 an objection to a question, or the question was  
00:12:18 21 withdrawn.

00:12:20 22 Base your decision only on the evidence, as  
00:12:23 23 I define "the evidence" in these instructions, and  
00:12:28 24 nothing else.

00:12:34 25 Consideration of evidence. Use your common



00:12:37 1 sense in weighing the evidence. Consider it in light of  
00:12:42 2 your everyday experience with people and events, and  
00:12:46 3 give it whatever weight you believe it deserves. If  
00:12:51 4 your experience tells you that certain evidence  
00:12:53 5 reasonably gives rise to an inference or leads to a  
00:12:57 6 conclusion based on that evidence, you may draw that  
00:13:03 7 inference or draw that conclusion.

00:13:08 8 Direct and circumstantial evidence. There  
00:13:15 9 are two general types of evidence: "Direct evidence" and  
00:13:21 10 "circumstantial evidence."

00:13:23 11 Direct evidence is simply evidence, like the  
00:13:26 12 testimony of an eyewitness, which, if you believe it,  
00:13:29 13 directly proves a fact. If a witness testified that he  
00:13:34 14 saw it raining outside, and you believed him, that would  
00:13:38 15 be direct evidence that it was raining.

00:13:41 16 Circumstantial evidence is simply evidence  
00:13:45 17 that indirectly proves a fact. If someone walked into  
00:13:51 18 the courtroom wearing a raincoat covered with drops of  
00:13:54 19 water and carrying a wet umbrella, that would be  
00:13:57 20 circumstantial evidence from which you could conclude  
00:14:00 21 that it was raining.

00:14:02 22 The law makes no distinction between the  
00:14:05 23 weight that you should give to either direct or  
00:14:08 24 circumstantial evidence or says that one is any better  
00:14:12 25 evidence than the other. You should consider all the

00:14:15 1 evidence, both direct and circumstantial, and give it  
00:14:19 2 whatever weight you believe it deserves.

00:14:24 3 Counsel, can you approach one second please.  
00:14:28 4 I'm going to pause right here. Do not turn to page 8.

00:16:20 5 (Whereupon the following discussion was had  
00:16:20 6 at the bench outside the hearing of the jury:)

00:16:20 7 THE COURT: Amy, did you do these from the  
00:16:20 8 second set? I thought I took out this typo. I can  
00:16:20 9 check the sequence here.

00:16:20 10 Elizabeth, you asked me to change the  
00:16:20 11 sequence.

00:16:20 12 MS. KELLEY: Yes, six and 27 towards the  
00:16:20 13 very end.

00:16:20 14 THE CLERK: I printed out the one you said  
00:16:21 15 "final."

00:16:21 16 THE COURT: No, I sent a second one.

00:16:21 17 THE CLERK: Right.

00:16:21 18 MS. KELLEY: Yeah, the inversion didn't take  
00:16:21 19 place.

00:16:21 20 THE COURT: This isn't the set. That's the  
00:16:21 21 only issue. I think otherwise we have some typos in  
00:16:21 22 here. The government's capital G, small G, and the one  
00:16:21 23 typo you picked up, Tom.

00:16:21 24 MR. SECOR: It was on page 18.

00:16:21 25 THE COURT: I'll find it.

00:16:21 1 MR. SECOR: No, it's changed.

00:16:21 2 (End of side-bar discussion.)

00:16:25 3 THE COURT: Now you may turn to page 8, and  
00:16:27 4 I'll resume reading.

00:16:28 5 Credibility of witnesses. In evaluating the  
00:16:33 6 evidence, you must decide how credible or believable  
00:16:36 7 each witness was. It is up to you, not to me, to decide  
00:16:43 8 if a witness' testimony was believable, and how much  
00:16:46 9 weight you think it deserves. You are free to believe  
00:16:50 10 everything that a witness said, part of it, or none of  
00:16:54 11 it at all. But you must act reasonably and carefully in  
00:16:58 12 making these decisions.

00:17:00 13 Some of the things you should consider in  
00:17:04 14 evaluating each witness' testimony are:

00:17:07 15 Could the witness clearly see, hear, or  
00:17:12 16 otherwise experience the things the witness testified  
00:17:15 17 about? Sometimes even an honest witness may not have  
00:17:20 18 been able to see, hear, or experience what was  
00:17:24 19 happening, and may make a mistake.

00:17:26 20 How well could the witness recall the events  
00:17:31 21 about which he testified? Did the witness seem able to  
00:17:35 22 accurately remember what happened?

00:17:38 23 Ask yourself if there was anything else that  
00:17:42 24 may have interfered with the witness' ability to  
00:17:46 25 perceive or remember the events.

00:17:50 1 How did the witness act while testifying?

00:17:54 2 Did the witness appear truthful or untruthful?

00:17:58 3 Did the witness have any relationship to the  
00:18:01 4 government or the defendant, or anything to gain or lose  
00:18:06 5 from the case, that might influence the witness'  
00:18:10 6 testimony? Did the witness have any bias, or  
00:18:14 7 prejudice, or any other reason for testifying that might  
00:18:19 8 cause the witness to lie or to slant the testimony in  
00:18:23 9 favor of one side or the other?

00:18:26 10 Did the witness testify inconsistently while  
00:18:30 11 on the witness stand, or was his testimony inconsistent  
00:18:36 12 in a material way with something that the witness said  
00:18:39 13 or did, or failed to say or do at some other time? If  
00:18:46 14 you believe that the witness was inconsistent, consider  
00:18:50 15 whether such inconsistency makes the witness' testimony  
00:18:56 16 less believable. Sometimes it may, other times it may  
00:19:08 17 not. Consider whether the inconsistency was about  
00:19:12 18 something important or something insignificant.

00:19:19 19 Take out the word "was," and the word "did"  
00:19:22 20 should be in there.

00:19:25 21 Did the inconsistency seem like an innocent  
00:19:29 22 mistake or a deliberate falsehood?

00:19:32 23 How believable was the witness' testimony --  
00:19:37 24 how believable was the witness' testimony -- take out  
00:19:41 25 the "was."

00:19:42 1 How believable was the witness' testimony in  
00:19:45 2 light of all the other evidence? Was the witness'  
00:19:49 3 testimony supported or contradicted by other evidence  
00:19:53 4 that you found believable? If you believe a witness'  
00:19:57 5 testimony was contradicted by other evidence, remember  
00:20:00 6 that people sometimes misperceive or forget things, and  
00:20:05 7 that even two honest people who witness the same event  
00:20:09 8 may not describe it exactly the same way.

00:20:12 9 These are some of the things that you may  
00:20:16 10 consider in deciding how believable each witness was.  
00:20:20 11 You may also consider other things that you think shed  
00:20:24 12 some light on the witness' believability. Use your  
00:20:28 13 common sense and your everyday experience in dealing  
00:20:32 14 with other people. And then decide what testimony you  
00:20:35 15 believe, and how much weight you think it deserves.

00:20:41 16 Number of witnesses. Do not make any  
00:20:46 17 decision based only on the number of witnesses who  
00:20:48 18 testified. What is more important is how believable the  
00:20:52 19 witnesses were, and how much weight you think their  
00:20:55 20 testimony deserves. Concentrate on that, not the  
00:20:59 21 numbers.

00:21:03 22 Lawyers' objections.

00:21:09 23 The lawyers for both sides sometimes  
00:21:11 24 objected to some of the things that were said or done  
00:21:14 25 during the trial. Do not hold that against either side

00:21:17 1 or the attorneys. A lawyer properly objects whenever he  
00:21:21 2 or she thinks that your hearing or seeing the evidence  
00:21:25 3 would be contrary to the Rules of Evidence. Those rules  
00:21:29 4 are designed to make sure that both sides receive a fair  
00:21:33 5 trial.

00:21:34 6 Do not interpret my rulings on objections as  
00:21:39 7 any indication of how I think this case should be  
00:21:43 8 decided. My rulings were based on the Rules of  
00:21:48 9 Evidence, not on how I feel about the case. Remember  
00:21:52 10 that your decision must be based only on the evidence  
00:21:56 11 that you saw and heard here in court.

00:22:02 12 Defining the crime and related matters.  
00:22:09 13 Introduction. That concludes the part of my  
00:22:12 14 instructions explaining your duties and the general  
00:22:15 15 rules that apply in every criminal case.

00:22:17 16 Before I proceed to define the crimes with  
00:22:20 17 which the defendant is charged and the elements of each  
00:22:25 18 which the government must prove beyond a reasonable  
00:22:28 19 doubt before you can find him guilty, I emphasize that  
00:22:31 20 the defendant is on trial for only the particular crimes  
00:22:36 21 charged in the indictment. Your job is limited to  
00:22:40 22 deciding whether the government has proved any or all of  
00:22:44 23 the crimes charged.

00:22:48 24 Separate consideration -- single defendant  
00:22:54 25 charged with multiple crimes. The defendant has been

00:22:58 1 charged with three crimes. The number of charges is not  
00:23:03 2 evidence of guilt, and this should not influence your  
00:23:06 3 decision in any way. It is your duty to separately  
00:23:10 4 consider the evidence that relates to each charge, and  
00:23:15 5 return a separate verdict for the elements of each one.  
00:23:19 6 For each charge, you must decide separately whether the  
00:23:25 7 government has presented proof beyond a reasonable doubt  
00:23:26 8 that the defendant is guilty of that particular charge.

00:23:30 9 Your decision on one charge, whether guilty  
00:23:33 10 or not guilty, should not influence your decision as to  
00:23:37 11 any other charge.

00:23:43 12 On or about. Each count of the indictment  
00:23:47 13 charges that the crimes occurred, quote, "on or about,"  
00:23:57 14 close quote, the date or dates specified in that count.  
00:24:01 15 The government does not have to prove that the crimes  
00:24:03 16 happened on those exact dates. But the government must  
00:24:06 17 prove that the crimes happened reasonably close to those  
00:24:09 18 dates.

00:24:12 19 Inferring required mental state.  
00:24:17 20 Ordinarily, there is no way that a defendant's state of  
00:24:21 21 mind can be proved directly. No one can read another  
00:24:26 22 person's mind and know what that person is thinking.

00:24:30 23 But a defendant's state of mind can be  
00:24:33 24 proved indirectly from the surrounding circumstances.  
00:24:44 25 These can include such things as what the defendant

00:24:49 1 said, what the defendant did, how the defendant acted,  
00:24:53 2 and any other facts or circumstances in evidence to show  
00:24:57 3 what was in the defendant's mind.

00:25:00 4 You may also consider the natural and  
00:25:04 5 probable results of any acts that the defendant  
00:25:07 6 knowingly did or did not do, and whether it is  
00:25:11 7 reasonable to conclude that the defendant intended those  
00:25:15 8 results.

00:25:18 9 Charges set forth in the indictment:

00:25:21 10 Defendant Alex D. Cook is charged with one  
00:25:25 11 count of receipt of visual depictions of minors engaged  
00:25:30 12 in sexually explicit conduct, in violation of Title 18,  
00:25:35 13 United States Code, Section 2252(a)(2); one count of  
00:25:41 14 distribution of child pornography, in violation of Title  
00:25:45 15 18, United States Code, Section 2252(a)(2), and one  
00:25:51 16 count of possession of child pornography, in violation  
00:25:54 17 of Title 18, United States Code, Section 2252(a)(4)(B).

00:26:03 18 I will now inform you of the elements of  
00:26:06 19 each charged offense.

00:26:15 20 Charging statute - Receiving and  
00:26:19 21 Distributing Material Involving Sexual Exploitation of  
00:26:22 22 Minors - Section 2252(a)(2).

00:26:27 23 The statute which is alleged to have been  
00:26:29 24 violated in counts 1 and 2 in Title 18, United States  
00:26:37 25 Code, Section 2252(a)(2). As relevant here, that



00:26:43 1 statute provides that:

00:26:45 2 A. A person who --

00:26:49 3 2. knowingly receives, or distributes, any  
00:26:52 4 visual depiction that has been mailed, or has been  
00:26:56 5 shipped or transported in interstate or foreign commerce  
00:27:01 6 if.

00:27:02 7 A. The production of such visual depiction  
00:27:05 8 involves the use of a minor engaging in sexually  
00:27:09 9 explicit conduct; and

00:27:12 10 B. such visual depiction is of such  
00:27:14 11 conduct,

00:27:15 12 shall be guilty of a criminal offense  
00:27:18 13 against the United States.

00:27:21 14 Elements of Offense - Receiving and  
00:27:24 15 Distributing Material Involving Sexual Exploitation of  
00:27:28 16 Minors - 18 U.S. Code Section 2252(a)(2).

00:27:33 17 Section 2252(a)(2) makes it a federal crime  
00:27:39 18 or offense for any person to knowingly receive or  
00:27:45 19 distribute any visual depiction that has been shipped or  
00:27:50 20 transported in interstate or foreign commerce by any  
00:27:55 21 means, including by computer, if the production of such  
00:28:00 22 visual depiction involved the use of a real minor  
00:28:04 23 engaging in sexually explicit conduct and the visual  
00:28:08 24 depiction is of such conduct.

00:28:10 25 For you to find the defendant guilty of

00:28:17 1 either or both of the offenses charged in Count 1 or 2,  
00:28:22 2 you must find that the government has proven each of the  
00:28:26 3 following elements beyond a reasonable doubt:

00:28:30 4 First: The defendant knowingly received or  
00:28:37 5 distributed a visual depiction;

00:28:41 6 Second: Such visual depiction was shipped or  
00:28:46 7 transported in interstate or foreign commerce by any  
00:28:50 8 means, including by computer;

00:28:54 9 Third: The production of such visual  
00:28:58 10 depiction involved the use of a real minor engaging in  
00:29:02 11 sexually explicit conduct;

00:29:05 12 Fourth: Such visual depiction is of a minor  
00:29:11 13 engaging in sexually explicit conduct; and

00:29:15 14 Fifth: The defendant knew that at least one  
00:29:19 15 of the individuals in such visual depiction was a minor  
00:29:24 16 and knew that the visual depiction was of such minor  
00:29:30 17 engaged in sexually explicit conduct.

00:29:34 18 Now I will give you more detailed  
00:29:36 19 instructions on some of the terms used in this statute.

00:29:44 20 To "receive" a visual depiction means to  
00:29:49 21 take possession of it. This includes knowing acceptance  
00:29:54 22 of a depiction previously requested. "Receiving"  
00:30:01 23 includes the downloading of a photograph or video by  
00:30:05 24 means of internet.

00:30:07 25 To "distribute" means to disseminate or

00:30:13 1 transfer possession to another person.

00:30:16 2 A "visual depiction" includes any  
00:30:22 3 photograph, film, video or picture, and data stored on  
00:30:27 4 computer disk or by electronic means which is capable of  
00:30:31 5 conversion into a visual image.

00:30:35 6 The government must prove that the defendant  
00:30:39 7 received or distributed the depiction "knowingly. " An  
00:30:47 8 act is done "knowingly" when it is done voluntarily and  
00:30:52 9 intentionally and not because of accident, mistake or  
00:30:57 10 some other innocent reason.

00:30:59 11 The term "computer" means an electronic,  
00:31:06 12 magnetic, optical, electrochemical, or other high speed  
00:31:11 13 data processing device performing logical, arithmetic,  
00:31:17 14 or storage functions, and includes any data storage  
00:31:21 15 facility or communications facility directly related to  
00:31:24 16 or operating in conjunction with such device.

00:31:32 17 "Minor" and "Sexually Explicit Conduct"  
00:31:39 18 defined.

00:31:40 19 The term "minor" means any person under the  
00:31:45 20 age of 18 years.

00:31:47 21 "Sexually explicit conduct" means actual or  
00:31:52 22 simulated :

00:31:53 23 A. Sexual intercourse, including  
00:31:57 24 genital-genital, oral-genital, anal-genital, or  
00:32:02 25 oral-anal, whether between persons of the same or

00:32:05 1 opposite sex;

00:32:06 2 B. bestiality;

00:32:09 3 C. masturbation;

00:32:11 4 D. sadistic or masochistic abuse; or

00:32:16 5 E. lascivious exhibition of the genitals or

00:32:20 6 pubic area of any person.

00:32:22 7 The government must prove that the  
00:32:26 8 pornographic images in this case depicted real children  
00:32:30 9 under the age of 18 years. You may rely on your  
00:32:33 10 observation and judgment in evaluating the images to  
00:32:37 11 determine whether they depict real children under the  
00:32:39 12 age of 18 years.

00:32:42 13 The government need not present expert or  
00:32:45 14 other testimony on whether the children are, in fact,  
00:32:50 15 real children as opposed to, say, youthful adults or  
00:32:54 16 computer generated images of children.

00:32:59 17 The government also need not present expert  
00:33:01 18 or other testimony on the ages of the children depicted.  
00:33:06 19 Rather, the government may meet its burden of proving  
00:33:09 20 the pornographic images depict real children under the  
00:33:13 21 age of 18 years by presenting the images to you, the  
00:33:16 22 jury, and allowing you to evaluate the images for  
00:33:20 23 yourselves.

00:33:23 24 Lascivious exhibition defined. Not every  
00:33:36 25 exposure of the genitals or pubic area constitutes

00:33:40 1 "lascivious exhibition." Whether a picture or image of  
00:33:46 2 the genitals or pubic area constitutes such a  
00:33:51 3 "lascivious exhibition" requires a consideration of the  
00:33:55 4 overall content of the material. It is for you to  
00:33:58 5 decide the weight or lack of weight to be given to any  
00:34:00 6 of the following factors:

00:34:01 7 You may consider such factors as:

00:34:05 8 A. whether the focal point of the picture  
00:34:07 9 or image is on the child's genitals or pubic area;

00:34:11 10 B. whether the setting of the picture or  
00:34:13 11 image is sexually suggestive, that is, in a place or  
00:34:18 12 pose generally associated with sexual activity;

00:34:23 13 C. whether the child is depicted in an  
00:34:25 14 unnatural pose or in inappropriate attire, considering  
00:34:31 15 the age of the minor.

00:34:32 16 D. whether the child is fully or partially  
00:34:36 17 clothed, or nude;

00:34:38 18 E. whether the picture or image suggests  
00:34:41 19 sexual coyness or a willingness to engage in sexual  
00:34:44 20 activity; and.

00:34:46 21 F. whether the picture or image is intended  
00:34:49 22 or designed to elicit a sexual response in the viewer.

00:34:54 23 A visual depiction or image need not involve  
00:34:58 24 all these factors to constitute a "lascivious  
00:35:02 25 exhibition" of the genitals or pubic area.

00:35:10 1 Interstate commerce.

00:35:12 2 The term "interstate or foreign commerce"  
00:35:16 3 means the movement of property from one state to another  
00:35:20 4 state, or from one state to another country, or from  
00:35:23 5 another country to a state. The term "state" includes a  
00:35:29 6 state of the United States, the District of Columbia,  
00:35:32 7 and any commonwealth, territory, or possession of the  
00:35:36 8 United States.

00:35:37 9 The phrase "transported in interstate or  
00:35:41 10 foreign commerce" means that the visual depiction or  
00:35:45 11 image, at any time, travelled or moved between one state  
00:35:52 12 and another state, or between a foreign country and a  
00:35:55 13 state. Evidence that an image was produced in a state  
00:36:01 14 other than Ohio, or in a foreign country, is sufficient  
00:36:05 15 to prove that the visual depiction or image has been  
00:36:09 16 transported in interstate or foreign commerce.

00:36:14 17 Evidence that a visual depiction or image  
00:36:17 18 was transmitted or received electronically by a computer  
00:36:22 19 connected to the internet is sufficient to establish  
00:36:26 20 that the visual depiction or image was transported or  
00:36:30 21 moved in interstate or foreign commerce. It is for you  
00:36:36 22 to determine if the material containing the visual  
00:36:40 23 depiction had been transmitted or received over the  
00:36:43 24 internet or was produced using materials that had been  
00:36:48 25 transmitted or received over the internet.

00:36:51 1 It is not necessary for the government to  
00:36:56 2 prove that the defendant transported the material  
00:37:00 3 containing the visual depiction in interstate or foreign  
00:37:03 4 commerce. It is not necessary for the government to  
00:37:06 5 prove the defendant knew that the material containing  
00:37:10 6 the visual depiction had moved in interstate or foreign  
00:37:14 7 commerce. It is sufficient that the government prove  
00:37:17 8 that at some point the material containing the visual  
00:37:21 9 depiction travelled in interstate or foreign commerce.

00:37:32 10 Essential elements of Section  
00:37:34 11 2252(a)(4)(B) - defined.

00:37:40 12 The defendant is charged in Count 3 of the  
00:37:43 13 indictment with possession of child pornography in  
00:37:47 14 violation of Title 18, United States Code, Section  
00:37:51 15 2252(a)(4)(B).

00:37:54 16 For you to find the defendant guilty of the  
00:37:59 17 offense charged in Count 3, you must find that the  
00:38:03 18 government has proven each of the following elements  
00:38:07 19 beyond a reasonable doubt:

00:38:09 20 First, that the defendant knowingly  
00:38:13 21 possessed photographic computer files which the  
00:38:18 22 defendant knew contained visual depictions of real  
00:38:23 23 minors engaged in sexually explicit conduct;

00:38:30 24 Second, the defendant knew the visual  
00:38:33 25 depictions contained in the photographic computer image

00:38:37 1 files shows minors engaged in sexually explicit conduct;

00:38:42 2 Third, the defendant knew that production of  
00:38:47 3 such visual depiction involved the use of a minor in  
00:38:50 4 sexually explicit conduct; and

00:38:54 5 Fourth, that the visual depictions had been  
00:38:58 6 either;

00:39:00 7 a. mailed, shipped or transported in  
00:39:02 8 interstate or foreign commerce, or

00:39:05 9 b. produced using material that had been  
00:39:08 10 mailed, shipped or transported in interstate or foreign  
00:39:12 11 commerce by computer or other means.

00:39:15 12 I have already defined for you the terms  
00:39:19 13 "visual depiction," "minor," "knowingly," and "sexually  
00:39:28 14 explicit conduct." Those definitions apply as well to  
00:39:32 15 the elements of the crime charged in Count 3.

00:39:35 16 "Producing" means producing, direction,  
00:39:39 17 manufacturing, issuing, publishing or advertising.

00:39:46 18 Possession.

00:39:50 19 To prove the defendant "possessed" the  
00:39:55 20 illegal material, the government does not necessarily  
00:39:58 21 have to prove that the defendant physically possessed  
00:40:02 22 the child pornography. The law recognizes two kinds of  
00:40:08 23 possession - "actual" possession and "constructive"  
00:40:14 24 possession. Either one of these, if proved by the  
00:40:20 25 government beyond a reasonable doubt, is enough to



00:40:22 1 convict.

00:40:23 2 To establish "actual possession" the  
00:40:30 3 government must prove that the defendant had direct  
00:40:33 4 physical control over the child pornography and knew  
00:40:38 5 that he had control over it.

00:40:39 6 To establish "constructive" possession, the  
00:40:43 7 government must prove that the defendant has the right  
00:40:47 8 to exercise physical control over the child pornography,  
00:40:50 9 and knew that he had this right, and that he intended to  
00:40:55 10 exercise physical control over the child pornography at  
00:40:59 11 some time, either directly or through other persons.

00:41:06 12 For example, if you left something with a  
00:41:09 13 friend intending to come back later and pick it up, or  
00:41:13 14 intending to send someone else to pick it up for you,  
00:41:18 15 you would have "constructive" possession of it while it  
00:41:23 16 was in the "actual" possession of your friend.

00:41:28 17 But understand that just being present where  
00:41:31 18 something is located does not equal possession. The  
00:41:34 19 government must prove that the defendant had actual or  
00:41:38 20 constructive possession of the child pornography, and  
00:41:43 21 knew that he did, for you to find him guilty of this  
00:41:46 22 crime. This, of course, is all for you to decide.

00:41:54 23 First Amendment does not protect child  
00:41:59 24 pornography. The First Amendment of the United States  
00:42:03 25 Constitution does not protect visual depictions of a

00:42:07 1 minor engaged in sexually explicit conduct as charged in  
00:42:11 2 the indictment.

00:42:15 3 Special evidentiary matters - introduction.

00:42:20 4 That concludes the part of my instructions  
00:42:22 5 explaining the elements of the crimes. Next I will  
00:42:25 6 explain some rules that you must use in considering some  
00:42:29 7 of the testimony and evidence.

00:42:35 8 Statement by the defendant.

00:42:40 9 You have heard testimony that the defendant  
00:42:43 10 on September 15, 2011 made a statement in which the  
00:42:49 11 government -- in which the government claims he admitted  
00:42:54 12 certain facts.

00:42:56 13 Do you want to approach?

00:42:58 14 MR. SECOR: Briefly.

00:42:59 15 THE COURT: Please turn back to the previous  
00:43:03 16 page.

00:43:51 17 MR. SECOR: A small matter. September,  
00:43:51 18 2010.

00:43:51 19 THE COURT: Thanks, Tom.

00:43:54 20 (End of side-bar discussion.)

00:44:11 21 THE COURT: Now you can turn back to page  
00:44:13 22 27. I'll start from the beginning. There is a mistake  
00:44:20 23 in the year. It's 2010, not 2011.

00:44:27 24 Statement by the defendant.

00:44:29 25 You've heard testimony that the defendant on

00:44:31 1 September 15, 2010 made a statement in which the  
00:44:36 2 government claims he admitted certain facts. The  
00:44:41 3 defendant disputes the government's version, typed by  
00:44:44 4 Agent Pape, of the statement. It is for you to  
00:44:47 5 determine what it was the defendant said to the agent  
00:44:50 6 and what weight to give to what he told him.

00:44:53 7 In determining what the defendant told the  
00:44:56 8 agent you should consider all of the evidence about the  
00:45:00 9 statement, including the circumstances under which the  
00:45:04 10 defendant spoke to the agent and the agent, in turn,  
00:45:07 11 created his typewritten version of the statement.

00:45:10 12 In determining what the defendant told the  
00:45:13 13 agent, you may also consider the failure of the agent to  
00:45:16 14 have recorded the interview and the oral statement made  
00:45:21 15 by the defendant to the agent.

00:45:23 16 You may not convict the defendant solely  
00:45:26 17 upon his own uncorroborated statement or admission.

00:45:38 18 Closing arguments by counsel.

00:45:41 19 I remind you that the closing arguments  
00:45:45 20 which you are about to hear, closing arguments of  
00:45:48 21 counsel, are not evidence. They are counsel's  
00:45:50 22 expression of their view of the evidence and how they  
00:45:53 23 believe you should interpret it in light of these  
00:45:55 24 instructions.

00:45:57 25 Because the government has the burden of

00:46:00 1 proof, its attorney will present closing argument first.  
00:46:06 2 Next, the defendant's attorney will present her closing  
00:46:09 3 argument. The government will conclude with its final,  
00:46:13 4 or rebuttal argument.

00:46:15 5 Following completion of the closing  
00:46:19 6 arguments, I will give you some concluding instructions  
00:46:23 7 about the conduct of your deliberations, and you will  
00:46:27 8 retire to the jury room to begin your deliberations.

00:46:31 9 Ladies and gentlemen, I'm going to stop  
00:46:33 10 here. You'll have closing argument of counsel. And may  
00:46:40 11 I suggest, counsel -- Mr. Secor or Mr. Crawford will be  
00:46:44 12 presenting?

00:46:44 13 MR. CRAWFORD: I will, Judge.

00:46:46 14 THE COURT: May I suggest at the conclusion  
00:46:47 15 of your closing argument we take our midmorning break,  
00:46:51 16 then Ms. Kelley will give hers, and you'll give your  
00:46:56 17 rebuttal. Is that agreeable to the jury? It will be  
00:47:00 18 what, a half hour, 45 minutes?

00:47:03 19 MR. CRAWFORD: That's correct.

00:47:04 20 THE COURT: Fine. You may proceed.

00:47:11 21 MR. CRAWFORD: Ladies and gentlemen, the  
00:47:12 22 evidence is in. Now it's time for you to do your job to  
00:47:16 23 return to the deliberation room and render a verdict on  
00:47:19 24 the evidence that you've heard here in court. Of  
00:47:24 25 course, you've listened to it carefully. Now I'll

00:47:26 1 provide you with a closing argument from the  
00:47:29 2 government's perspective about what the evidence shows.

00:47:32 3 This is a straightforward child pornography  
00:47:34 4 investigation by the FBI. You heard the testimony of  
00:47:37 5 Special Agent Whisman in Oklahoma. He conducted an  
00:47:41 6 undercover download session using LimeWire. He  
00:47:45 7 downloaded child pornography, learned that the child  
00:47:49 8 pornography was coming from an IP address. That IP  
00:47:52 9 address was linked to the internet account of the  
00:47:55 10 defendant, Mr. Cook.

00:47:57 11 Agent Whisman didn't run and get an  
00:47:59 12 indictment. No, he continued the investigation. He  
00:48:03 13 sent that information to Special Agent Schulte here at  
00:48:08 14 the FBI office in Lima.

00:48:10 15 Special Agent Schulte conducted an  
00:48:12 16 investigation, conducted surveillance, and learned, yes,  
00:48:15 17 Mr. Cook did live there, a roommate as well. Did some  
00:48:19 18 background on Mr. Cook. They served a search warrant.  
00:48:23 19 And what happened? Mr. Cook admitted there was child  
00:48:27 20 pornography on this computer when they served the search  
00:48:32 21 warrant, Special Agent Pape testified.

00:48:34 22 But don't take his word for it, because you  
00:48:37 23 heard Mr. Cook's testimony yesterday; he told Special  
00:48:40 24 Agent Pape, yeah, there might be child pornography on my  
00:48:43 25 computer.

00:48:46 1 Well, now the FBI is getting somewhere. Mr.  
00:48:51 2 Cook voluntarily goes down to the FBI office. He's not  
00:48:54 3 arrested. He's not handcuffed. He's not told he has to  
00:48:58 4 go down there. He goes down there voluntarily. What do  
00:49:01 5 they do? Read him his Miranda rights, provide him a  
00:49:05 6 Miranda form that he reads and signs. He gives a  
00:49:08 7 statement. What does that statement say? The very  
00:49:11 8 first sentence of that statement says, in regards to  
00:49:14 9 having child pornography on his computer, I do have  
00:49:17 10 child pornography images on my computer, on my personal  
00:49:20 11 laptop computer, which is in my bedroom in my apartment.  
00:49:23 12 That's the first sentence. It's not buried in the  
00:49:27 13 middle. It's the first sentence. He gives that  
00:49:30 14 statement to Special Agent Pape.

00:49:31 15 And you heard testimony about yelling and  
00:49:33 16 screaming and whatnot, calling someone an idiot for  
00:49:36 17 three or four hours. You heard Special Agent Schulte;  
00:49:40 18 he said, yeah, there was a bathroom break in the middle.  
00:49:43 19 So I assume when he came back, the yelling and screaming  
00:49:46 20 continued. Special Agent Schulte is sitting right  
00:49:48 21 outside the room. He didn't hear yelling and screaming.  
00:49:51 22 It was a standard interview. A statement was taken.  
00:49:54 23 I'm sure presumably after this yelling and screaming  
00:49:58 24 went on, Special Agent Pape just said, hey, let's stop  
00:50:01 25 and write a letter to the prosecutor telling him to drop

00:50:04 1 the case. Credibility issues; those are things for you  
00:50:08 2 to decide.

00:50:11 3 What should you decide about that statement?  
00:50:13 4 Well, you have to consider all the circumstances. Is  
00:50:16 5 there other information that corroborates it? You've  
00:50:19 6 heard testimony about Boy Scouts, camp leaders, learning  
00:50:22 7 disabilities. The question is whether or not the  
00:50:24 8 statement is the truth. And there's every reason to  
00:50:28 9 believe that it is the truth.

00:50:31 10 Eight months later Mr. Cook went to see Dr.  
00:50:34 11 Graves, and what did he tell Dr. Graves? Yes, I had  
00:50:38 12 seen child pornography on my computer. Yes, I know how  
00:50:40 13 to use LimeWire; I use it to download music; I use it to  
00:50:44 14 download adult pornography. Don't know anything about  
00:50:47 15 that child pornography stuff, but I know about all the  
00:50:50 16 other stuff. He saw child pornography on his computer.  
00:50:54 17 Isn't that the same thing he told Special Agent Pape?

00:50:58 18 He said, well, equivocally, maybe he  
00:51:02 19 believed it was child pornography. But he was able to  
00:51:04 20 tell Dr. Graves it was a 14 or 15 year old girl with  
00:51:08 21 small breasts and no body hair. That's what he told Dr.  
00:51:12 22 Graves, and Dr. Graves admitted that to you.

00:51:15 23 Third, this statement matches the other  
00:51:19 24 evidence in the case. Look at the forensics. What do  
00:51:23 25 the forensics tell you? You heard Detective Morford.

00:51:26 1 He looked at this computer. He did a forensic analysis  
00:51:30 2 of it. He made an image of the hard drive to see what  
00:51:33 3 was there. You saw the screen shots, the Government's  
00:51:36 4 Exhibit 15 of what Mr. Cook's computer looked like when  
00:51:39 5 it was turned on using the virtual machine. You saw  
00:51:42 6 Windows Explorer. What was in that LimeWire saved  
00:51:46 7 folder? Right in there mixed with music from Carrie  
00:51:49 8 Underwood, Jimmie Hendrix, Deep Purple, you had images  
00:51:54 9 entitled, PTHC; we understood that to mean preteen  
00:51:59 10 hardcore; Lolita; underage; illegal. Who opens -- who  
00:52:04 11 has files on their computer, downloads files that have  
00:52:08 12 the word "illegal"? PEDO; hussy; kiddie porn; 12 YO, we  
00:52:13 13 understood that stands for 12 year old; nine year old;  
00:52:17 14 ten year old. It was right there with all the music  
00:52:20 15 files and adult pornography. You saw the screens.

00:52:26 16 Pay attention to what Mr. Cook's own experts  
00:52:28 17 said about these files. He viewed them. He said in his  
00:52:31 18 testimony, yeah, the jury could conclude that this is  
00:52:35 19 child pornography. That's their expert, what their  
00:52:37 20 expert say said.

00:52:41 21 He talked about the LimeWire incomplete  
00:52:44 22 folder which contained information about files that  
00:52:48 23 someone had selected for download from LimeWire but had  
00:52:52 24 not yet been complete. So their expert wasn't able to  
00:52:56 25 actually look at these files to determine whether they



00:52:59 1 were child pornography because they hadn't been  
00:53:01 2 downloaded, but he could look at the names, and he knew  
00:53:05 3 that was suspected child pornography. That's their  
00:53:06 4 expert. Don't take Detective Morford's word for it.  
00:53:10 5 Don't take Agent Schulte's word for it. Listen to their  
00:53:14 6 expert.

00:53:14 7 Credibility. Is credibility important?  
00:53:17 8 Sure, it's important. You have to decide what you  
00:53:19 9 believe about the witnesses, who's believable and who's  
00:53:22 10 not. That's your job.

00:53:25 11 Special Agent Pape told you about the  
00:53:26 12 confession. He stood by, sat on the stand twice, talked  
00:53:30 13 about this confession, how he wrote it, how he did the  
00:53:33 14 interview, how he shared it with Mr. Cook, how he  
00:53:36 15 collaborated with Mr. Cook. He gave Mr. Cook an  
00:53:39 16 opportunity to read it and sign it. As he said, the  
00:53:43 17 very first sentence, admits the allegation of child  
00:53:47 18 pornography. It's the first thing he would have read.

00:53:52 19 You have to weigh that against what? Well,  
00:53:55 20 Mr. Cook testified. Consider what Mr. Cook told you.  
00:53:59 21 All right. Since this began in September of 2010 for  
00:54:05 22 Mr. Cook, he's got about four stories that have been  
00:54:07 23 floating around. The first one is the one he told  
00:54:10 24 Special Agent Pape. Yes, I downloaded child pornography  
00:54:12 25 on my computer. That's the story in his statement;

00:54:15 1 that's the story that's consistent with the forensics  
00:54:18 2 and all the other evidence in the case.

00:54:21 3 He comes back from the FBI office. You  
00:54:23 4 heard Ian Douglas' testimony. He told Ian Douglas, it's  
00:54:27 5 identity theft.

00:54:28 6 Then he goes to see Dr. Graves and says,  
00:54:30 7 well, yeah, I guess I saw some child pornography on my  
00:54:33 8 computer. Yes, I downloaded adult pornography on  
00:54:37 9 LimeWire. Yes, I use LimeWire for music. I don't know  
00:54:40 10 anything about that child pornography stuff.

00:54:41 11 The third story he's telling Dr. Graves; he  
00:54:48 12 also talks about Ian Douglas, obviously has a huge ax to  
00:54:52 13 grind with Ian Douglas. But interestingly, he does  
00:54:57 14 tell doesn't tell Dr. Graves, I think he downloaded  
00:55:01 15 child pornography on my computer.

00:55:02 16 That's the forth story. That's the one he's  
00:55:05 17 telling you. You have to decide, Special Agent Pape's  
00:55:08 18 testimony or Mr. Douglas' [sic].

00:55:10 19 Let's talk about the elements of the  
00:55:12 20 offense. As the Court instructed you, it's the  
00:55:15 21 government's burden of proof, beyond a reasonable doubt,  
00:55:17 22 each and every element of the offense charged. There's  
00:55:21 23 three offenses charged, two of them are similar; they  
00:55:24 24 have similar elements. Then there's a third one which  
00:55:27 25 is possession. The first one is receipt of child

00:55:30 1 pornography. The first element says we must prove the  
00:55:32 2 defendant knowingly received a visual depiction. Again,  
00:55:42 3 you heard the computer forensics. You heard Detective  
00:55:46 4 Morford, the government's expert. You heard Mr. Vassel,  
00:55:47 5 their expert. They agreed. They analyzed the computer.  
00:55:52 6 They agree there is LimeWire populated with saved music,  
00:55:55 7 populated with pornography and other sorts of images.

00:55:59 8 It's Mr. Cook's computer. Did he know he  
00:56:02 9 was downloading visual depictions? He told you himself  
00:56:06 10 he used LimeWire. He used it to download music. Used  
00:56:09 11 it to download adult pornography. Did he use it to  
00:56:13 12 download child pornography? The evidence suggests so.

00:56:16 13 You've heard what LimeWire is. LimeWire is  
00:56:20 14 a worldwide network. It's a computer program that  
00:56:23 15 allows LimeWire users to search other LimeWire users  
00:56:26 16 throughout the world to see what files they're sharing.  
00:56:29 17 So when you enter a search in LimeWire, you get to see  
00:56:32 18 what other LimeWire users have; you get to pick it. And  
00:56:34 19 what happens? It makes it to your computer. That's  
00:56:39 20 the nature of LimeWire. Mr. Cook knows that. He  
00:56:42 21 admitted using LimeWire. He knows what it is.

00:56:44 22 Second, we have to prove that these visual  
00:56:47 23 depictions were shipped or transported through  
00:56:50 24 interstate or foreign commerce. In the first charge  
00:56:52 25 we're talking about receiving child pornography. You

00:56:54 1 heard the testimony of Amy Allen, the Department of  
00:56:58 2 Homeland Security, and the testimony of Detective Roy  
00:57:03 3 Shepherd from the state of Washington. They both  
00:57:05 4 investigated known victims that were in images found on  
00:57:11 5 this computer.

00:57:12 6 Amy Allen investigated the victim in  
00:57:15 7 Michigan. Pictures made in Michigan; it moves to Ohio.  
00:57:22 8 Interstate commerce.

00:57:23 9 The same thing for Detective Roy Shepherd.  
00:57:25 10 The victim's in Washington; the images travel from  
00:57:28 11 Washington to Ohio. Interstate commerce.

00:57:30 12 And if you look at the instructions again,  
00:57:32 13 as you will also notice that the use of a computer on  
00:57:36 14 the internet by its very nature is a means of interstate  
00:57:40 15 commerce, can fulfill that element.

00:57:44 16 Third and fourth elements are the production  
00:57:49 17 of these visual depictions involved the use of a minor  
00:57:53 18 engaged in sexually explicit conduct, and then that  
00:57:57 19 those resulting images do, in fact, depict that minor  
00:57:59 20 engaged in sexually explicit conduct. You saw the  
00:58:02 21 images in court. Right. The government, we don't show  
00:58:07 22 that to torture you. We show you that because we have  
00:58:10 23 to determine -- we have to prove beyond a reasonable  
00:58:12 24 doubt whether or not they were actual children engaged  
00:58:16 25 in sexually explicit conduct. And we also do it to

00:58:20 1 prove the fifth element, which is knowledge that the  
00:58:23 2 defendant knew these were children engaged in sexually  
00:58:27 3 explicit conduct.

00:58:29 4           Getting back to the third and fourth  
00:58:32 5 element, whether these are real minors. You can rely on  
00:58:35 6 your own judgment. You heard the testimony of Special  
00:58:38 7 Agent Schulte describing what's often looked for in  
00:58:43 8 deciding whether or not these are children under the age  
00:58:45 9 of 18: breast development; pubic hair; the environment  
00:58:49 10 in which they're in; the poses in which these children  
00:58:52 11 are put in; whether there's sadomasochistic abuse,  
00:58:59 12 bondage, and the like. Those are all things taken into  
00:59:02 13 consideration whether these are real children engaged in  
00:59:05 14 sexually explicit conduct.

00:59:06 15           Fifth, there must be proof that the  
00:59:08 16 defendant knew that the images on this computer were  
00:59:14 17 images of real children and that he knew that those  
00:59:16 18 children were real and that they were engaged in  
00:59:19 19 sexually explicit conduct. If you have an image of a  
00:59:23 20 girl who is 17 years and 11 months old in lascivious  
00:59:30 21 exhibition, by statute that's child pornography, under  
00:59:33 22 the age of 18. But in order to get a conviction, you've  
00:59:36 23 got to prove that the defendant knew that girl was 17  
00:59:41 24 years and 11 months. That's a tough case. Compare that  
00:59:45 25 with what you saw here. Compare it with what you saw

00:59:49 1 here. Would anyone looking at those pictures not know  
00:59:54 2 that they are children engaged in sexually explicit  
00:59:58 3 conduct? Real children? It's for you to decide.

01:00:10 4 You heard Mr. Cook testify that he used  
01:00:12 5 LimeWire for adult pornography and music. Is it at all  
01:00:17 6 plausible to believe that he didn't use it for child  
01:00:21 7 pornography? Again, you saw his screen shots. That was  
01:00:24 8 what he was using. How could he miss those files  
01:00:27 9 titled preteen hardcore? You've seen the nature of the  
01:00:32 10 images. You've also heard testimony about the length of  
01:00:36 11 time he had this computer. Images that Special Agent  
01:00:42 12 Whisman located in June of 2010 were still on this  
01:00:45 13 computer when it was seized in September of 2010. It's  
01:00:51 14 a good three months they were on this computer. Mr.  
01:00:55 15 Cook had this computer the whole time and never saw a  
01:00:58 16 single one of them? Does that sound plausible to you?

01:01:06 17 Detective Morford reviewed several images  
01:01:10 18 that he talks about in his FTK report, identified  
01:01:15 19 several that were during the month of May, it's alleged  
01:01:18 20 in the indictment.

01:01:22 21 The distribution of child pornography. The  
01:01:25 22 elements, other than receipt, we're talking about  
01:01:30 23 distribution, are the same as the charges I just  
01:01:32 24 described to you. Distribution, however, is a little  
01:01:35 25 different. There must be proof that Mr. Cook knowingly

01:01:39 1 distributed these images. He was a LimeWire user. He  
01:01:43 2 was searching other people's computers for files. How  
01:01:47 3 could he not know other people were searching his  
01:01:50 4 computer for files? It's the way LimeWire works. You  
01:01:54 5 have Special Agent Whisman's testimony about the  
01:01:55 6 undercover session and his IP address. The IP address  
01:01:59 7 was Mr. Cook's internet service account. It pointed  
01:02:03 8 directly to him. And LimeWire itself beats the user  
01:02:07 9 over the head every time you use it to tell you you are  
01:02:10 10 sharing files with the world. You saw the screen shots  
01:02:17 11 in the public share folder of LimeWire. It says  
01:02:21 12 conspicuously in the middle of the screen, "Files on  
01:02:24 13 this list are shared anonymously with the world." Right  
01:02:28 14 above that sentence, all those files, preteen hardcore,  
01:02:32 15 Lolita, underage, hussy fan. It's right there. How can  
01:02:37 16 you not know that other people -- that he was not  
01:02:41 17 sharing these with other people?

01:02:44 18           You saw Government's Exhibit 19 which was a  
01:02:46 19 slide show that showed the installation process of  
01:02:50 20 LimeWire. It explains in there, files using the public  
01:02:55 21 shared folder are going to be shared, and you have the  
01:02:57 22 option of turning that feature off. That's how it's  
01:03:01 23 installed. Their expert indicated that LimeWire was  
01:03:06 24 installed on that computer July of 2009. It could have  
01:03:09 25 been changed, but it wasn't. Sharing was left on.

01:03:15 1                   You heard a lot of testimony about MAC  
01:03:18 2 addresses. The testimony is simply this: You have an  
01:03:22 3 IP address. Sure, you could have several computers  
01:03:26 4 using the same IP address. If you had a MAC address  
01:03:29 5 that might narrow it down to an individual computer.  
01:03:32 6 None of that changes this set of facts: Special Agent  
01:03:35 7 Whisman in Oklahoma downloaded child pornography from an  
01:03:39 8 IP address linked to Mr. Cook's account. The FBI went  
01:03:46 9 to Mr. Cook's apartment; they found this computer, they  
01:03:50 10 did a forensic analysis of it, and the exact same files  
01:03:55 11 that Special Agent Whisman downloaded in Oklahoma were  
01:03:58 12 still on this computer. Don't take Detective Morford's  
01:04:03 13 word for it, don't take Agent Whisman's word for it;  
01:04:06 14 their expert told you that. He testified yesterday,  
01:04:09 15 yes, everything that Agent Whisman downloaded is still  
01:04:13 16 on this computer. Now, do you need a MAC address to  
01:04:17 17 convince you that the files Special Agent Whisman  
01:04:21 18 downloaded in Oklahoma came from that computer?

01:04:31 19                   The second element for distribution,  
01:04:33 20 interstate or foreign commerce. Special Agent Whisman  
01:04:37 21 is in Oklahoma. He's downloading things there. It  
01:04:40 22 comes from an IP address in Lima, Ohio. Oklahoma to  
01:04:45 23 Ohio, it's interstate commerce.

01:04:48 24                   Third and fourth elements, the visual  
01:04:49 25 depictions involved the use of a real minor engaged in



01:04:52 1 sexually explicit conduct. Those visual depictions  
01:04:57 2 actually depicted these minors engaged in sexually  
01:05:01 3 explicit conduct. Ladies and gentlemen, for the same  
01:05:03 4 reasons I just explained to you, you can decide for  
01:05:05 5 yourself whether or not this element is met. You've  
01:05:08 6 seen the images; you can make that determination.

01:05:10 7           Lastly, did the defendant know that these  
01:05:14 8 images he was sharing came from real children engaged in  
01:05:20 9 sexually explicit conduct? Once again, for the same  
01:05:23 10 reasons I just explained, you can conclude that. They  
01:05:26 11 were staring you in the face every time he turned  
01:05:28 12 LimeWire on. He couldn't miss it. And again, you've  
01:05:32 13 seen the nature of the images. Any way he could have  
01:05:35 14 been confused that these were adults? It's for you to  
01:05:39 15 decide.

01:05:40 16           Lastly is possession. And possession,  
01:05:42 17 again, relies on the same facts I just stated.

01:05:46 18           Of course the defendant knowingly possessed  
01:05:48 19 these photographic computer files. You've heard the  
01:05:52 20 testimony about LimeWire. Is it at all plausible to use  
01:05:57 21 it for adult pornography, to use it for music; he just  
01:06:01 22 doesn't know anything about that child pornography  
01:06:02 23 stuff? He was on his computer. There's no dispute  
01:06:05 24 that's his computer. It was found in his bedroom. He  
01:06:10 25 told Special Agent Pape twice he had child pornography

01:06:14 1 on his computer: he told Special Agent Pape in his  
01:06:18 2 apartment when they searched the search warrant; he told  
01:06:20 3 him again when they went down to the FBI office in Lima  
01:06:24 4 for the interview. He told Dr. Graves, yeah, I've seen  
01:06:28 5 child pornography on my computer. And, of course, the  
01:06:29 6 forensic analysis fully supports he had child  
01:06:33 7 pornography on that computer. Did he know the visual  
01:06:41 8 depictions of minors engaged in sexually explicit  
01:06:47 9 conduct? You've seen it.

01:06:52 10 Lastly, interstate or foreign commerce.  
01:06:55 11 Again, you've heard the testimony of Amy Allen and Roy  
01:06:59 12 Shepherd. You heard the testimony of Agent Whisman  
01:07:02 13 about the interstate nature and the use of computers in  
01:07:05 14 this case.

01:07:07 15 As I mentioned, it's a straightforward case,  
01:07:10 16 ladies and gentlemen. You've heard the evidence. You  
01:07:12 17 can decide who to believe and who not to believe. What  
01:07:14 18 story is plausible, what aren't? What do the parties  
01:07:18 19 agree? What do the experts agree? Those are things to  
01:07:21 20 consider in deciding whether the government's met its  
01:07:23 21 burden of proving this case.

01:07:25 22 I'll have a rebuttal argument shortly to  
01:07:27 23 address some other issues, then I'll ask you to return  
01:07:30 24 to the jury room and return a verdict, we believe is the  
01:07:33 25 only verdict at this point with the evidence, and that's

01:07:36 1 a verdict of guilty on all charges. Thank you.

01:07:43 2 THE COURT: How long do you think your  
01:07:45 3 argument will be?

01:07:50 4 MS. KELLEY: I don't know, Your Honor. If  
01:07:54 5 you're asking should we go for a break now, it's  
01:07:57 6 immaterial to me. Whatever the jury wants.

01:07:59 7 THE COURT: Okay. If we continue, ladies  
01:08:03 8 and gentlemen -- let's keep going. Anybody disagree  
01:08:06 9 about that?

01:08:15 10 Ms. Kelley, you may present your closing  
01:08:17 11 argument.

01:08:25 12 MS. KELLEY: Good morning, ladies and  
01:08:29 13 gentlemen. First of all on behalf of Alex and his  
01:08:31 14 family, we want to thank you for basically giving up  
01:08:34 15 this week and, more importantly, giving Alex and his  
01:08:39 16 case your time and your consideration.

01:08:43 17 You may remember on Tuesday during my  
01:08:46 18 opening argument I said that this case would boil down  
01:08:51 19 to three things and that our evidence and our testimony  
01:08:56 20 would support three things:

01:08:59 21 Number 1. Did Alex knowingly put those  
01:09:03 22 disgusting images on his computer?

01:09:07 23 Number 2. Did he confess to a crime he did  
01:09:13 24 not commit?

01:09:15 25 Number 3. Did the government have the right

01:09:18 1 person?

01:09:21 2 I'll address each of those issues in turn.

01:09:24 3 First of all, did Alex knowingly put those  
01:09:29 4 objects on his computer? There has been some  
01:09:34 5 discussion, a lot of discussion about the deleted files.  
01:09:42 6 Our expert, Mark Vassel, testified to you that there  
01:09:47 7 were some deleted files put in the recycle bin. He  
01:09:52 8 testified to you that based on his expertise and his  
01:09:55 9 experience people who are obsessed with child  
01:10:00 10 pornography do not delete files. They do not put them  
01:10:04 11 in the recycle bin. They save them. They try and  
01:10:08 12 access them again and again and again to feed their  
01:10:14 13 hunger. Alex didn't do it.

01:10:19 14 Now, Alex, contrary to what the government  
01:10:23 15 has said, has been absolutely consistent in his  
01:10:27 16 statement about those deleted files. Yeah, when the  
01:10:33 17 agents were talking to him outside his apartment, what  
01:10:37 18 he said was this: Yes, there are some deleted files on  
01:10:44 19 my computer. He explained that to you on the stand. He  
01:10:51 20 talked about how when he came home one day he clicked on  
01:10:55 21 his screen and there those were, and he deleted them.  
01:10:59 22 And when you go back to your jury deliberation room and  
01:11:03 23 you read the instructions, you will see that "knowingly"  
01:11:09 24 is not innocent possession; it's not possession by  
01:11:13 25 accident. They were there. He didn't put them there.

01:11:17 1 And he got rid of them as fast as humanly possible.

01:11:24 2 Interestingly enough, when you look at the  
01:11:27 3 agent's 302 back in your deliberation room, go through  
01:11:31 4 that 302. Nowhere in that 302 will you see subject Alex  
01:11:41 5 Cook confessed to me outside the apartment that there  
01:11:45 6 was child pornography.

01:11:46 7 MR. CRAWFORD: Judge, I object to that  
01:11:48 8 characterization. If we could speak at the side,  
01:11:52 9 please.

01:13:14 10 (Whereupon the following discussion was had  
01:13:14 11 at the bench outside the hearing of the jury:)

01:13:14 12 MR. CRAWFORD: Judge, Agent Pape's testimony  
01:13:14 13 is I recorded what he told me in a 498, which is a  
01:13:14 14 polygraph report that we agreed yesterday would not be  
01:13:14 15 discussed. So to say that there is no writing of him  
01:13:14 16 saying it.

01:13:14 17 THE COURT: No writing in evidence.

01:13:15 18 MS. KELLEY: Nothing on the 302.

01:13:15 19 MR. CRAWFORD: Well, the suggestion is  
01:13:15 20 there's no written --

01:13:15 21 THE COURT: There's no writing in evidence,  
01:13:15 22 and the 498 is not evidence.

01:13:15 23 MS. KELLEY: There's no suggestion in the  
01:13:15 24 302.

01:13:15 25 MR. CRAWFORD: But the characterization is it

01:13:15 1 was never written down.

01:13:15 2 MS. KELLEY: It wasn't.

01:13:16 3 MR. CRAWFORD: It was written down, Judge.

01:13:16 4 THE COURT: But it's not in evidence. It's  
01:13:16 5 not in evidence.

01:13:17 6 (End of side-bar discussion.)

01:13:21 7 MS. KELLEY: Ladies and gentlemen, simply  
01:13:22 8 look at that 302. No mention whatsoever that subject  
01:13:28 9 Alex Cook confessed to me that there was child  
01:13:33 10 pornography on his computer. In contrast, you will see  
01:13:38 11 on another 302 that when they spoke with Ian Douglas,  
01:13:42 12 they put everything about that conversation in that 302.

01:13:52 13 Alex also has been consistent with Dr.  
01:13:56 14 Graves. He said to Dr. Graves and Dr. Graves told you  
01:13:59 15 that Alex said, yeah, there was some child pornography  
01:14:02 16 on my computer, and I deleted it. That's what the  
01:14:07 17 deletion is about. That is the only child pornography  
01:14:11 18 that Alex had any knowledge of being on his computer.

01:14:20 19 We are here because of 34 different things  
01:14:27 20 that the undercover agent found during his  
01:14:30 21 investigation; 30 images, and four movies. You saw them  
01:14:38 22 during the course of this trial. The dates those ended  
01:14:43 23 up on the computer were from May of 2010 until September  
01:14:51 24 of 2010. Coincidentally, the time that Ian Douglas was  
01:14:56 25 in the apartment.

01:15:00 1 Now, what's important about those dates  
01:15:06 2 other than the sheer coincidence is the fact that Mark  
01:15:12 3 Vassel, our computer forensic expert, told you that the  
01:15:17 4 LimeWire, Alex's LimeWire, was downloaded in July of  
01:15:23 5 2010. Alex explained to you that the computer was a  
01:15:28 6 graduation present.

01:15:29 7 MR. CRAWFORD: Judge, another objection.

01:15:31 8 THE COURT: Approach, please.

01:15:33 9 (Whereupon the following discussion was had  
01:16:29 10 at the bench outside the hearing of the jury:)

01:16:29 11 MR. CRAWFORD: The testimony is that LimeWire  
01:16:29 12 was put on the computer in July of 2009. The statement  
01:16:29 13 is 2010.

01:16:29 14 MS. KELLEY: I made a mistake. I'm sorry.

01:16:29 15 MR. CRAWFORD: It's critical, Judge. It  
01:16:29 16 needs to be corrected.

01:16:29 17 THE COURT: She'll correct it.

01:16:29 18 MS. KELLEY: I appreciate your pointing it  
01:16:30 19 out.

01:16:30 20 (End of sidebar discussion.)

01:16:31 21 THE COURT: You may continue.

01:16:32 22 MS. KELLEY: Thank you.

01:16:35 23 Mr. Morford [sic] just proffered a very  
01:16:38 24 important point. In fact, it's a crucially helpful  
01:16:40 25 point to us, and that is the LimeWire was not installed

01:16:45 1 in July of 2010; it was installed in July of 2009. And  
01:16:53 2 the reason why this is so important is because that  
01:16:59 3 LimeWire had been on Alex's computer almost a year  
01:17:03 4 before the undercover operation started. And it's even  
01:17:10 5 more important because -- and I'll talk more about this  
01:17:14 6 later -- in the so-called confession Alex supposedly  
01:17:19 7 says to the Detective, I started looking at child  
01:17:26 8 pornography when I was on the road travelling on my  
01:17:29 9 construction job. Ladies and gentlemen, I respectfully  
01:17:33 10 submit to you that if Alex had been looking at that  
01:17:37 11 stuff as early as July of 2010 [sic] when he was on the  
01:17:46 12 road when the LimeWire was installed, they would have  
01:17:51 13 nabbed him; the government would have nabbed him. But  
01:17:55 14 instead, the first inkling they have is not until July  
01:17:59 15 of 2010 when the undercover agent received those objects  
01:18:07 16 from Alex's IP address.

01:18:15 17 Now, you're going to look at some of the  
01:18:18 18 attachments, and you're going to find a couple titles  
01:18:21 19 which precede May of 2010. You're going to find a  
01:18:27 20 couple from April of 2010. And those are pretty easily  
01:18:33 21 explainable.

01:18:34 22 Number one, we heard testimony from Mr.  
01:18:40 23 Vassel that when you make a LimeWire request, it's  
01:18:43 24 basically a bulk order, and you're going to get a lot of  
01:18:47 25 junk; you're going to get a lot of stuff you don't want;



01:18:50 1 you're going to get a lot of stuff you may not even know  
01:18:54 2 about. And also we heard testimony about the problems  
01:18:58 3 with LimeWire and the concerns with LimeWire. And  
01:19:03 4 indeed, LimeWire has been shut down.

01:19:08 5 Now, one of the things we emphasized again  
01:19:14 6 and again and again and, in particular, Mr. Vassel  
01:19:18 7 emphasized with those 34 objects was that the creation  
01:19:24 8 date was virtually the same as the access date.

01:19:29 9 Then Mr. Morford -- Mr. Crawford, I'm sorry,  
01:19:33 10 Mr. Crawford pointed out that in that huge, huge  
01:19:37 11 attachment that you're going to have in the jury room  
01:19:40 12 called "Saved," all of the access and all of the  
01:19:43 13 creation dates were the same on that; that's not  
01:19:48 14 significant. Because you were supposed to see a Perry  
01:19:57 15 Mason moment, that is to say, when Mr. Crawford asked  
01:20:02 16 Agent Morford to access one of those files, and you  
01:20:08 17 supposedly should magically see a new access time and  
01:20:12 18 date, which would have been yesterday afternoon, and you  
01:20:17 19 didn't see it, well, the reason is very simple, that was  
01:20:21 20 a virtual demonstration, not an actual demonstration  
01:20:26 21 like someone actually sitting down at the keyboard using  
01:20:30 22 the hard drive would engage in. It's apples and  
01:20:35 23 oranges. And our expert, Mr. Vassel, testified that  
01:20:39 24 the updating device was, indeed, on.

01:20:49 25 Now, I want to move on to the second major

01:20:53 1 topic, the second major issue, the second major bone of  
01:20:58 2 contention: the so-called confession. First of all, I  
01:21:05 3 want to discuss the content. There were huge material  
01:21:13 4 misstatements of fact in that confession, things that  
01:21:18 5 were downright goofy. For instance, that Alex  
01:21:23 6 supposedly told the agent he taught Sunday school. His  
01:21:27 7 father and the pastor got on the stand and said, no,  
01:21:32 8 thank you very much, Alex doesn't teach Sunday school  
01:21:35 9 because, quite frankly, he doesn't go to church often  
01:21:39 10 enough.

01:21:40 11 Secondly, he supposedly told the agent about  
01:21:43 12 an ex-fiancée' who reminded him of one of the little  
01:21:48 13 girls on these images. His father didn't know anything  
01:21:54 14 about an ex-fiancée, and Alex certainly denied having an  
01:21:59 15 ex-fiancée. Why would he tell the Detective that? It  
01:22:04 16 doesn't make any sense.

01:22:06 17 I already talked about the fact that Alex  
01:22:09 18 supposedly told the agent that he had been looking at  
01:22:12 19 pornography for a while, indeed ever since the time he  
01:22:17 20 started going on the road working construction. The  
01:22:21 21 forensics don't support that.

01:22:24 22 And then there's the supposed statement that  
01:22:27 23 Alex made about going to Boy Scout camp and being  
01:22:31 24 molested. His father, the man, the human being with  
01:22:39 25 whom he is the closest of anyone on the planet, said

01:22:45 1 that Alex never told him about that. Ladies and  
01:22:52 2 gentlemen, if he's not willing to tell his own father  
01:22:56 3 that he was molested, why on earth is he going to tell  
01:23:01 4 an FBI agent who he's known for a grand total of three  
01:23:05 5 hours? It doesn't make any sense.

01:23:09 6 And then the Scoutmaster, you remember him,  
01:23:12 7 the gentleman in uniform, he said that Scouting has a  
01:23:16 8 very, very strict policy that if you are inappropriately  
01:23:21 9 touched, you tell an adult. And that type of report was  
01:23:27 10 never done. And, ladies and gentlemen, wouldn't you  
01:23:33 11 also think that if this agent had taken a so-called  
01:23:37 12 statement from a young man who supposedly confessed to  
01:23:44 13 having child pornography on his computer, a young man  
01:23:49 14 who supposedly teaches Sunday school, a young man who  
01:23:54 15 seemingly has access to small and vulnerable children,  
01:23:59 16 that that agent or someone from his office would pick up  
01:24:02 17 a phone and call the pastor and say, hey, you've got a  
01:24:08 18 pervert, you've got a pedophile in your midst, terminate  
01:24:14 19 the Sunday school contract. Did not happen.

01:24:22 20 Why did Alex talk to this gentleman in the  
01:24:26 21 first place? Ladies and gentlemen, we are not saying  
01:24:34 22 that Agent Schulte or Agent Pape or anyone in that  
01:24:38 23 office beat a confession out of him or pounded a  
01:24:43 24 confession out of him. I don't know if Agent Pape  
01:24:48 25 yelled. I don't care. He may have raised his voice.

01:24:52 1 He may have whispered. He may have spoken in Spanish.  
01:24:56 2 He may have spoken in Spanish or in Swaheli. It does  
01:25:01 3 not matter. What matters is how did Alex feel? He was  
01:25:09 4 probably scared. He was 19 years old at the time. No  
01:25:13 5 prior involvement with law enforcement. Ten guys and a  
01:25:20 6 couple women come in his door early in the morning, some  
01:25:23 7 of them with guns. They search his apartment. He was  
01:25:26 8 probably scared. But he willingly went down to  
01:25:30 9 headquarters, and he willingly talked with these guys.  
01:25:39 10 Why? Because he trusted them, and he respected them.  
01:25:48 11 That's the way he's been raised. You saw him on the  
01:25:53 12 stand. Everything to the U.S. Attorney's office and to  
01:25:58 13 me and to the Judge has been "yes, sir," "no, sir,"  
01:26:05 14 "yes, ma'am," "no, ma'am." I didn't teach him that for  
01:26:10 15 purposes of trial. We didn't clean him up and give him  
01:26:14 16 a buzz cut and put him in a suit to sit at trial today.  
01:26:18 17 We didn't teach him what to say on the stand. That's  
01:26:21 18 who he is. That's the way he was raised.  
01:26:27 19 I don't know what happened in that room. I  
01:26:31 20 know the agents are busy. Maybe they got him mixed up  
01:26:35 21 with someone else. But too much, too much is wrong  
01:26:41 22 about that confession. I asked the agent on  
01:26:45 23 cross-examination some very, very basic questions like  
01:26:51 24 "Why didn't you print him out a hard copy so he could  
01:26:55 25 take it away?" Ladies and gentlemen, in virtually

01:26:59 1 every single transaction of our lives we have some sort  
01:27:03 2 of record. We have some sort of receipt. You go to  
01:27:06 3 McDonald's, you buy a cup of coffee for \$1.25, they give  
01:27:11 4 you a receipt; they give you evidence of that  
01:27:13 5 transaction. You go to Dunkin' Donuts and they tell  
01:27:18 6 you, If we don't give you a receipt, your order is free.  
01:27:21 7 You rent a car, you fill out lots of paperwork, and you  
01:27:24 8 get copies. Lord knows you buy a house and you get tons  
01:27:28 9 of copies of mortgage documents. Then why didn't they  
01:27:33 10 give him a copy of this supposed statement that he  
01:27:38 11 signed when he went to the FBI office? If you can get  
01:27:45 12 evidence of a transaction for buying a cup of coffee,  
01:27:49 13 then why can't you get evidence at the time it happens  
01:27:52 14 that you confessed to a federal crime? It doesn't make  
01:27:57 15 any sense, particularly if you have a printer in the  
01:28:02 16 room.

01:28:03 17           You heard the whole dynamic about the review  
01:28:08 18 of the statement. You probably wondered what I was up  
01:28:13 19 to when I had the agent read the advice of rights form,  
01:28:17 20 and then I had him read the statement. There was a  
01:28:21 21 method to my madness. That advice of rights form took  
01:28:27 22 45 seconds to read. It was one page, double spaced,  
01:28:33 23 some of it bold across the top. It took him well over 3  
01:28:37 24 minutes to read the two-page single-spaced so-called  
01:28:44 25 confession. And beyond that every person who has ever

01:28:50 1 watched a Law & Order type show on TV in 21st century  
01:28:55 2 America has heard you have the right to remain silent,  
01:28:58 3 et cetera, et cetera, et cetera. Alex knew the rhythm.  
01:29:04 4 But then Alex, a young man with documented longstanding  
01:29:11 5 reading disabilities, was shown a so-called confession  
01:29:19 6 on a computer screen with the agent scrolling down.  
01:29:27 7 Think about it. It doesn't make sense.

01:29:30 8 I asked the agent about the manufacture of  
01:29:34 9 the document itself:

01:29:37 10 Why didn't you have the person write out a  
01:29:39 11 statement, and then you can retype it?

01:29:42 12 That's not my policy.

01:29:44 13 Why don't you have the person sit at the  
01:29:46 14 keyboard and write it out?

01:29:48 15 Well, I don't like other people touching my  
01:29:50 16 keyboard.

01:29:51 17 I can understand that, but get over it.  
01:29:55 18 This is a man's life. This is important. This is a  
01:29:57 19 confession seemingly.

01:30:01 20 Now, I understand that within the first 30  
01:30:03 21 seconds of conversation, meeting someone, you do not  
01:30:07 22 say, by the way, ma'am/sir, do you have a reading  
01:30:11 23 disability? I understand that. But nonetheless,  
01:30:15 24 consider those circumstances. In the morning Alex is  
01:30:21 25 scared; he trusts this guy. He has a reading

01:30:25 1 disability. He's embarrassed about it. He's shown this  
01:30:28 2 long statement on a screen, big words like  
01:30:35 3 desensitization are on the confession. He wants to get  
01:30:39 4 out of there. You or I may not have confessed to a  
01:30:42 5 crime we did not commit, but Alex, given who he is,  
01:30:46 6 given who he was, at that moment in time, did. And he  
01:30:52 7 didn't find out the weight or the import of what he had  
01:30:57 8 signed until he was in the middle of this case. It's  
01:31:03 9 patently, it's disgustingly unfair.

01:31:08 10 And one piece of equipment would have laid  
01:31:12 11 all of this ambiguity to rest, and that would be either  
01:31:17 12 a tape recorder, or that would be some type of other  
01:31:21 13 recording of what really happened in that room. I  
01:31:27 14 understand, I think we all understand that Agent Schulte  
01:31:31 15 and Agent Pape, while very, very conscientious men, do  
01:31:36 16 not set FBI policy, and recording of interrogations is  
01:31:43 17 only done in extraordinary circumstances. Well, to Alex  
01:31:51 18 and his family, that morning of September 15 was  
01:31:54 19 extraordinary, absolutely, unambiguously extraordinary.

01:31:54 20  
01:29:18 21 and would, to high Heaven, Agent Schulte or agent Pape  
01:29:21 22 call their superiors and ask for extraordinary  
01:29:26 23 permission under this extraordinary circumstance for  
01:29:32 24 this extraordinary young man to record that confession?  
01:29:40 25 They didn't. We understand that. And we understand FBI

01:29:44 1 policy. And some day it may change. But in the  
01:29:50 2 meantime, ladies and gentlemen, I implore you, do not  
01:29:56 3 hold Alex the victim of that circumstance. Do not hold  
01:30:03 4 him responsible for supposedly confessing to something  
01:30:08 5 he did not do because as you will read in the  
01:30:13 6 instructions, we do not have any evidence of it. We do  
01:30:20 7 not have any, what we call, corroboration.

01:30:28 8 The final topic I would like to discuss is  
01:30:33 9 whether the government has the right person.

01:30:44 10 You may remember the first time when Agent  
01:30:48 11 Morford was on the stand. I asked him point blank: Do  
01:30:53 12 you know who was in front of that keyboard?

01:31:01 13 No. No, he said. All he knows is what came  
01:31:07 14 from that IP address.

01:31:12 15 I also asked Agent Whisman, the gentleman  
01:31:16 16 from Oklahoma: Sir, I know you were in computer  
01:31:20 17 conversation with this IP address, but did you have  
01:31:23 18 anything like a camera in that apartment above that  
01:31:26 19 computer, above that keyboard, above that IP address?

01:31:38 20 No, he said.

01:31:39 21 In the jury room you're going to take a look  
01:31:41 22 or you're going to have the opportunity to see a  
01:31:45 23 correspondence with Time Warner, and you will see on one  
01:31:48 24 of those documents it says, Time Warner makes no  
01:31:51 25 representation as to the identity of the person of this



01:31:56 1 IP address. Time Warner itself can't vouch.

01:32:04 2 Now, was it Ian who's responsible for  
01:32:18 3 putting those objects on the computer? Probably. But  
01:32:22 4 this trial is not a whodunit. But nonetheless, Ian  
01:32:30 5 bears some very, very serious consideration. First of  
01:32:36 6 all, as I previously mentioned, isn't it strangely  
01:32:42 7 perversely coincidental that the dates on the undercover  
01:32:47 8 project match Ian's move-in date? And isn't it  
01:32:57 9 interesting that those are times when Ian, not Alex, was  
01:33:04 10 home? Alex, who during this time was working, going to  
01:33:11 11 school, going home on weekends to visit his parents; and  
01:33:18 12 Ian, who's sitting around the apartment all day, yes,  
01:33:23 13 going to school a little bit, but doesn't have a job,  
01:33:26 14 and basically hanging out. Huge, huge reasonable doubt,  
01:33:34 15 ladies and gentlemen.

01:33:40 16 There were five surveillance operations on  
01:33:47 17 the part of the FBI office in that parking lot. This  
01:33:53 18 was basically an apartment building with lots of trucks,  
01:34:01 19 lots of college students, and there's an undercover car  
01:34:06 20 there on five different occasions? Don't you think  
01:34:14 21 someone noticed? Wouldn't you think that Ian, who's  
01:34:20 22 sitting at home most of the time, would spot a rather  
01:34:25 23 interesting and unusual vehicle in the parking lot just  
01:34:30 24 observing?

01:34:32 25 And isn't it interesting that Ian went

01:34:35 1 through three different laptops during the time he lived  
01:34:42 2 in that apartment? I think my laptop is about ten  
01:34:49 3 years old. It doesn't make sense.

01:34:52 4 And then you heard the testimony from Alex's  
01:34:55 5 father that during that first week of May they saw Ian  
01:35:03 6 using Alex's computer.

01:35:06 7 These are two young students sharing an  
01:35:09 8 apartment, sharing everything, sharing the food, sharing  
01:35:14 9 clothing, everything I'm told but baseball caps, and  
01:35:19 10 sharing computers. Alex knew Ian's password. And even  
01:35:27 11 though Alex had some biometric contraption on his own  
01:35:33 12 computer, that didn't prevent someone, someone else,  
01:35:40 13 someone other than Alex, from using the computer. Ian  
01:35:47 14 or anyone else could have been sitting at that keyboard,  
01:35:52 15 Ian or anyone else could have been putting that stuff on  
01:35:56 16 Alex's computer.

01:36:10 17 As I was driving into work or I was driving  
01:36:14 18 to the courthouse this morning, I passed a Triple-A  
01:36:17 19 office. And there was a sign up on its message board  
01:36:24 20 and it said, Remember 9/11. And during this week, in  
01:36:30 21 this beautiful stately courtroom, we have seen at play  
01:36:38 22 many of the reasons why we all so love and respect our  
01:36:43 23 country, principles which underscore our criminal  
01:36:52 24 justice system, the right of the accused, even someone  
01:39:48 25 accused of the most horrible of crimes like Alex, to

01:39:52 1 have a trial by jury, the burden of proof placed on the  
01:40:00 2 government to prove its case beyond a reasonable doubt,  
01:40:08 3 the right of the accuser to know the evidence to be  
01:40:14 4 brought against him, the fact that the accused is bathed  
01:40:22 5 in the presumption of innocence, and the right of the  
01:40:28 6 accused to confront his accusers.

01:40:33 7 Ladies and gentlemen, during this week you  
01:40:38 8 have seen Alex, a 20 year old man, confront his  
01:40:46 9 accusers, respectfully confront his accusers,  
01:40:56 10 respectfully confront the federal government which had  
01:41:04 11 an undercover agent monitor him, which had surveillance  
01:41:12 12 duty watch him, which claimed he confessed to a crime he  
01:41:20 13 did not do. For that, we should be grateful for those  
01:41:30 14 rights; we should all be grateful. And in the meantime,  
01:41:37 15 ladies and gentlemen, on behalf of Alex and his parents  
01:41:42 16 and everyone who believes in him, we ask you to return a  
01:41:46 17 verdict of not guilty. Thank you.

01:41:55 18 THE COURT: Mr. Crawford, do you want to  
01:41:58 19 proceed with rebuttal?

01:41:59 20 MR. CRAWFORD: That would be fine, Judge.

01:42:01 21 THE COURT: I'll conclude the charge for  
01:42:04 22 about five minutes after you, and the jury can retire.

01:42:11 23 MR. CRAWFORD: Ladies and gentlemen, Ian  
01:42:12 24 Douglas is a red herring.

01:42:22 25 THE JUROR: Excuse me?

01:42:24 1 MR. CRAWFORD: Ladies and gentlemen, Ian  
01:42:25 2 Douglas is a red herring. You heard the testimony of  
01:42:28 3 their expert yesterday about files that were in the  
01:42:31 4 LimeWire incomplete folder. He testified about that.  
01:42:36 5 That's Exhibit 21. Those are files that were to be  
01:42:39 6 downloaded but had not yet been downloaded. One of the  
01:42:44 7 files in Exhibit 21 is entitled -- one was entitled  
01:42:52 8 "Virgin teen gets raped in her own house." Date  
01:42:57 9 created, 4/19/2010. Another was entitled "German school  
01:43:02 10 girls in pretty orgy, Lolita, child PEDO, et cetera;  
01:43:06 11 date created, April 2, 2010.

01:43:11 12 I asked Mr. Vassel specifically: "So, for  
01:43:18 13 example, on April 19, 2010, someone using this computer,  
01:43:22 14 using LimeWire, selected a file from LimeWire to  
01:43:24 15 download entitled "Virgin teen gets raped in her own  
01:43:28 16 house"?

01:43:28 17 The answer was, "Yes."

01:43:31 18 I asked him, "It's also true on April 2,  
01:43:34 19 2010, someone using LimeWire selected a file entitled  
01:43:38 20 "German school girl in pretty orgy, et cetera? They  
01:43:41 21 selected that file for download; is that correct?

01:43:44 22 And Mr. Vassel's answer was, "That's  
01:43:46 23 correct."

01:43:47 24 Detective Morford came in yesterday, and you  
01:43:49 25 saw a short piece of a video entitled "Two 13 year old

01:43:54 1 little girls get come in face;" date created, April 19,  
01:44:01 2 2010. Mr. Cook testified that he moved into that  
01:44:04 3 apartment at the end of April. Mr. Cook's father  
01:44:08 4 testified that he moved into that apartment the last  
01:44:11 5 week of April. Mr. Douglas testified that they moved in  
01:44:15 6 at the beginning of May. Ladies and gentlemen, someone  
01:44:21 7 was putting that pornography on this computer before Mr.  
01:44:25 8 Douglas even came into the picture. Look at the dates.  
01:44:33 9           You heard evidence about date created, last  
01:44:36 10 access time, and so forth. The explanation is now  
01:44:39 11 Detective Morford wasn't actually running his computer.  
01:44:42 12 Detective Morford came in and talked about his forensic  
01:44:45 13 analysis. He talked about making an mirror image. He  
01:44:49 14 talked about using virtual box to use that computer and  
01:44:52 15 how virtual box was the same as starting up the  
01:44:55 16 computer. And there was no objection to that. That's  
01:44:58 17 where all these screen shots came from. There was no  
01:45:00 18 objection about the accuracy of these screen shots.  
01:45:03 19 It's the same process he used to determine whether this  
01:45:06 20 last updated feature was turned on or not. Mr. Vassel  
01:45:11 21 didn't actually turn the computer on himself. He  
01:45:14 22 looked at a mirror image. So are we to believe that's  
01:45:18 23 apples and oranges too? All the files in that LimeWire  
01:42:32 24 saved, each given file, has a date created, date and  
01:42:38 25 time, and the same last accessed date and time.

01:45:31 1 Detective Morford testified, as he tested Mr. Cook's  
01:45:35 2 computer, that feature by default on Windows Vista is  
01:45:40 3 turned off. Why else would all 800-plus files in the  
01:45:43 4 LimeWire saved folder appear to have never been  
01:45:46 5 accessed? Mr. Vassel was asked about that. He was  
01:45:52 6 asked, are we to conclude that there were just 800 files  
01:45:55 7 sitting on this computer that had never been listened to  
01:45:58 8 or viewed or anything?

01:46:01 9 Mr. Vassel's answer: In this attachment,  
01:46:04 10 referring to the stack of printouts, you can conclude  
01:46:07 11 that they haven't been opened or viewed or displayed.

01:46:09 12 Question: Why on earth would someone have a  
01:46:11 13 bunch of music on a computer and not listen to it?

01:46:14 14 Answer: They don't know where it is. They  
01:46:16 15 haven't turned their computer on. Or they may not even  
01:46:19 16 know how to navigate.

01:46:21 17 Does that sound like Alex Cook? He  
01:46:23 18 testified to you he used LimeWire. He knows where the  
01:46:26 19 music is. He knows how all that stuff works. Could it  
01:46:29 20 be possible he has all of those files on that computer  
01:46:32 21 and not have a clue where they are? Never turned on the  
01:46:34 22 computer? It's completely implausible. Completely  
01:46:38 23 implausible.

01:46:40 24 Beyond that, with respect to Mr. Douglas  
01:46:44 25 clearly there's an ax to grind there. You heard the

01:46:47 1 statements that he made to Dr. Graves; he called Ian  
01:46:54 2 Douglas a jerk; he owed him for bills, wrecked his  
01:46:59 3 four-wheeler. He didn't tell him about the child  
01:47:03 4 pornography. He waited to trial to blame Mr. Douglas  
01:47:07 5 for that. Ian Douglas, he didn't have anything to do  
01:47:10 6 with this. He came in to testify. You heard the  
01:47:12 7 testimony. You can judge it for yourself.

01:47:14 8           There's been evidence and there's been talk  
01:47:17 9 about evidence of key word searching. I suppose there's  
01:47:20 10 no evidence of key word searching for child pornography  
01:47:23 11 if you completely ignore the way LimeWire works.  
01:47:27 12 LimeWire is a key word search based program. You open  
01:47:32 13 LimeWire; you type in key words; you get results; you  
01:47:37 14 pick the files, and you download them. I suppose it  
01:47:40 15 could be true that Mr. Cook was looking for a copy of  
01:47:44 16 the book Lolita and he typed in Lolita and all this  
01:47:47 17 child pornography came up. But the fact is that child  
01:47:51 18 pornography is what ended up on the computer. Key word  
01:47:54 19 searches for child pornography is not a crime.

01:47:56 20 Downloading it from LimeWire and putting it on your  
01:47:59 21 computer, that's the crime, and that's what happened.

01:48:08 22           Special Agent Pape's testimony. Would it  
01:48:14 23 have been better had Special Agent Pape taped the  
01:48:18 24 confession? Sure, it would have been. But you heard  
01:48:22 25 the explanation of why he didn't do it. There's an FBI

01:48:25 1 policy. And, of course, the ultimate question is, as I  
01:48:28 2 said in my first argument: Is this the truth? You  
01:48:33 3 don't have to have a recording to decide whether this is  
01:48:36 4 the truth. Every single government witness provided  
01:48:41 5 corroborating evidence that this is the truth. Evidence  
01:48:44 6 about surveillance, evidence about downloads sessions,  
01:48:51 7 IP, forensic analysis all corroborates what's going on  
01:48:57 8 here.

01:48:57 9 Yes, you've heard from Boy Scout leaders,  
01:49:00 10 church leaders; you heard about ex-fiancées. Ladies  
01:49:04 11 and gentlemen, when Special Agent Pape sat down with  
01:49:07 12 Alex Cook, he didn't know the guy. How's he going to  
01:49:11 13 know to put in this statement about Boy Scout camp? A  
01:49:16 14 lucky guess? How's he going to know -- he put in here  
01:49:19 15 he went to church in Knox County. Lucky guess? They  
01:49:24 16 talked about this. Read this statement. Read the  
01:49:29 17 statement about Boy Scout camp. Read the statement  
01:49:34 18 about the fiancée. Read the statement about the  
01:49:37 19 curiosity. Read the statement about the curiosity with  
01:49:40 20 the fiancée, children in the low teen range. Compare  
01:49:46 21 that to the images you saw. Ladies and gentlemen, this  
01:49:51 22 statement reads like someone who's just realized that  
01:49:56 23 they're in a whole lot of trouble and they better start  
01:49:59 24 coming up with some excuses really quick. This is what  
01:50:04 25 Mr. Cook told Agent Pape when he signed it, and all the



01:50:08 1 other evidence in this case supports it.

01:50:16 2 And of course, at the end of the day we went  
01:50:18 3 over the elements. Nowhere in those elements is there  
01:50:22 4 an element that the government prove beyond a reasonable  
01:50:26 5 doubt Alex Cook confessed to the crime. It's just  
01:50:29 6 evidence, like everything else you've seen. So even at  
01:50:32 7 the end of the day if you choose not to believe it,  
01:50:34 8 you've still got to look at the other evidence in the  
01:50:37 9 case.

01:50:38 10 The Court has a couple other comments for  
01:50:40 11 you, then you will retire to deliberate. We would ask  
01:50:43 12 you to look carefully at the evidence, weigh it, come to  
01:50:45 13 a decision, and we believe that the only decision  
01:50:48 14 consistent with that evidence is the government has met  
01:50:51 15 its burden on all charges. We would ask you to return  
01:50:54 16 a verdict of guilty. Thank you.

01:51:00 17 THE COURT: Ladies and gentlemen, I will now  
01:51:01 18 read my final set of instructions which relate to your  
01:51:19 19 conduct during deliberations.

01:51:27 20 Duty to deliberate.

01:51:28 21 Now you are free to talk about the case in  
01:51:31 22 the jury room.

01:51:32 23 In fact, it is your duty to talk with each  
01:51:35 24 other about the evidence, and to make every reasonable  
01:51:38 25 effort to reach unanimous agreement. Talk with each

01:51:42 1 other, listen carefully and respectfully to each other's  
01:51:49 2 views, and keep an open mind as you listen to what your  
01:51:52 3 fellow jurors have to say. Try your best to work out  
01:51:56 4 your differences.

01:51:57 5           You must decide for yourself if the  
01:52:02 6 government has proved the defendant guilty beyond a  
01:52:06 7 reasonable doubt of the charges in the indictment. Do  
01:52:11 8 not hesitate to change your mind if you are convinced  
01:52:15 9 that other jurors are right and that your original  
01:52:19 10 position was wrong. But do not change your mind just  
01:52:23 11 because other jurors see things differently, or just to  
01:52:28 12 get the case over with. In the end, your vote must be  
01:52:32 13 exactly that, your own vote. It is important for you to  
01:52:37 14 reach unanimous agreement, but only if you can do so  
01:52:41 15 honestly and in good conscience.

01:52:44 16           No one will be allowed to hear your  
01:52:48 17 discussions in the jury room, and no record will be made  
01:52:52 18 of what you say. You should all feel free to speak your  
01:52:55 19 minds.

01:52:59 20           Procedure during deliberations. The first  
01:53:02 21 thing you should do in the jury room is choose your  
01:53:05 22 foreperson. This person will help guide your  
01:53:07 23 discussions, and will speak for you here in court.

01:53:11 24           Once you start deliberating, do not talk to  
01:53:15 25 the clerk or, or me, or anyone else except each other

01:53:19 1 about the case. Your discussions, moreover, can occur  
01:53:22 2 only when all 12 of you are together in the jury room,  
01:53:26 3 if any juror is not in the jury room, do not discuss the  
01:53:30 4 case until that juror joins you. While your  
01:53:33 5 deliberations are continuing, do not discuss the case  
01:53:36 6 outside the jury room, either with your fellow jurors or  
01:53:40 7 anyone else.

01:53:42 8 If you have any questions or messages, they  
01:53:48 9 should be written, signed by the foreperson, and given  
01:53:51 10 to the clerk to give to me. I may have to talk to the  
01:53:55 11 lawyers before responding, so it may take me some time  
01:53:59 12 to get back to you.

01:54:00 13 In any communication with the Court or  
01:54:04 14 clerk, do not write down, tell, or indicate in any way  
01:54:10 15 whatsoever how you stand on your vote.

01:54:15 16 Remember that you must make your decision  
01:54:17 17 based only on the evidence that you saw and heard here  
01:54:23 18 in court. Do not try to gather any information about  
01:54:26 19 the case on your own by any means whatsoever while you  
01:54:31 20 are deliberating.

01:54:32 21 Turn to number 7 on the next page. It's out  
01:54:39 22 of order.

01:54:44 23 Your verdict, whether it is guilty or not  
01:54:47 24 guilty, must be unanimous. To find the defendant  
01:54:51 25 guilty, every one of you must agree that the government

01:54:54 1 has overcome the presumption of innocence with evidence  
01:54:57 2 that proves his guilt beyond a reasonable doubt.

01:55:04 3 Turn back to number six.

01:55:06 4 If you unanimously find the defendant guilty  
01:55:09 5 beyond a reasonable doubt, then it will be my job to  
01:55:13 6 determine what the appropriate punishment should be.  
01:55:16 7 Deciding what the punishment should be is my job, not  
01:55:19 8 yours. It would violate your oaths as jurors to even  
01:55:24 9 consider the possible punishment in deciding your  
01:55:27 10 verdict.

01:55:31 11 I have prepared a verdict form for you to  
01:55:35 12 record your verdict. On the completion of your  
01:55:39 13 deliberations, after you have reached unanimous  
01:55:42 14 agreement as to your verdicts, sign the form and notify  
01:55:46 15 the clerk that you have concluded your deliberations.

01:55:49 16 If you'll turn to the very last page,  
01:55:58 17 please. The form reads: United States District Court  
01:56:04 18 for the Northern District of Ohio, Western Division.  
01:56:08 19 United States of America, plaintiff, versus Alex D.  
01:56:11 20 Cook, defendant. Case number 3:10-CR-522. My name.  
01:56:16 21 Verdict: We, the jury, on the issues joined,  
01:56:20 22 unanimously find:

01:56:23 23 1. As to Count 1: Guilty, not guilty.

01:56:27 24 2. As to Count 2: Guilty, not guilty.

01:56:32 25 3. As to Count 3: Guilty, not guilty.

01:56:37 1 Then signature lines for all 12 jurors.

01:56:46 2 Return to page 31.

01:56:47 3 I remind you that nothing I have said or  
01:56:51 4 done during this trial has been meant to influence your  
01:56:54 5 decision in any way. You decide for yourselves if the  
01:56:57 6 government has proved the defendant guilty beyond a  
01:56:59 7 reasonable doubt.

01:57:00 8 At the outset of this case alternate jurors  
01:57:03 9 were selected in the event of any misfortune to a member  
01:57:07 10 of the panel. It will not be necessary for the  
01:57:09 11 alternate jurors to serve further. Do not tell anyone  
01:57:13 12 how you would have voted, and do not discuss the case  
01:57:16 13 with anyone until you have learned that the jury has  
01:57:19 14 returned. And the alternates whom I will excuse now are  
01:57:25 15 Mr. Destazio and Ms. Chapman. I'm sorry to send you on  
01:57:28 16 your way. It's a bit like the runners who have trained  
01:57:34 17 hard for the race, show up at the track, and there's no  
01:57:38 18 room or space for you to run. I apologize, but as I  
01:57:44 19 say, it's necessary to impanel -- it's customary to  
01:57:47 20 impanel alternate jurors just in case somebody has an  
01:57:53 21 accident or problem at home or becomes ill or for  
01:57:55 22 whatever reason is not able to continue to serve as a  
01:57:58 23 juror. So you are excused now.

01:58:02 24 And, Amy, do they have their things back in  
01:58:05 25 the jury room?

01:58:10 1 You can go back with the jurors, but do not  
01:58:14 2 participate in any way in the deliberations, and the  
01:58:16 3 panel should not begin deliberations until Mr. Destazio  
01:58:21 4 and Ms. Chapman have left the room.

01:58:26 5 Ladies and gentlemen, as I've indicated two  
01:58:30 6 or three times, the schedule is now in your hands. You  
01:58:33 7 can begin deliberations immediately, you can decide to  
01:58:38 8 take whatever break you want. You can decide to adjourn  
01:58:42 9 for the day and come back on Monday if you wish. All  
01:58:44 10 of that is entirely up to you. I only ask that if you  
01:58:48 11 do either take a break in your deliberations, let Amy  
01:58:55 12 know, and certainly if you adjourn for the day, let Amy  
01:59:00 13 know. And also let her know, and she'll tell us when  
01:59:05 14 you resume your deliberation. As I say, the schedule is  
01:59:09 15 entirely up to you. We thank you in advance for the  
01:59:17 16 diligence and attention which you give to your  
01:59:20 17 deliberations. And we await your verdict. You may  
01:59:23 18 retire.

02:00:04 19 (Jury exits the courtroom.)

02:00:06 20 THE COURT: For the record, any objections  
02:00:08 21 to the charge?

02:00:09 22 MS. KELLEY: None, Your Honor. Thank you.

02:00:11 23 THE COURT: Again, I don't know if you have  
02:00:13 24 to renew your Rule 29 motion. I just don't know the  
02:00:17 25 procedure.

02:00:18 1 MS. KELLEY: For the sake of the record I  
02:00:19 2 will, Your Honor.

02:00:20 3 THE COURT: And I will take it under  
02:00:21 4 advisement. Amy will be telling the jurors that the  
02:00:26 5 exhibits will be up there in a moment. Can you each  
02:00:29 6 check to make sure your exhibits are all together? It's  
02:00:32 7 up to each of you to see to it that the ones go back  
02:00:35 8 that should and nothing goes back that shouldn't. Where  
02:00:43 9 will you be waiting, back in your office?

02:00:46 10 MR. SECOR: More than likely back at the  
02:00:47 11 office. Amy has our cell phones.

02:00:50 12 THE COURT: Ms. Kelley?

02:00:52 13 MS. KELLEY: I'll probably be in the  
02:00:54 14 courthouse.

02:00:54 15 THE COURT: If you want to go up to the  
02:00:56 16 library, there's a computer up there and so forth.  
02:00:59 17 Whatever suits your pleasure. Okay. Let's wait until  
02:01:06 18 Amy gets back. Are your exhibits all together, or does  
02:01:09 19 Amy have them?

02:01:10 20 MR. SECOR: I know she has some of them.

02:01:12 21 THE COURT: Why don't you guys put them  
02:01:16 22 together, then I'll step down.

02:01:19 23 MR. CRAWFORD: Judge, the initial list, of  
02:01:21 24 course, for the JURS system was submitted beforehand.  
02:01:24 25 There was some paper here --

02:01:26 1 THE COURT: Amy can help you work that out.

02:01:26 2 (Adjourned at 10:42 a.m.)

02:01:26 3 - - -

04:19:23 4 (Reconvened at 1:00 p.m. in chambers.)

04:19:23 5 THE COURT: We have a question from the

04:19:29 6 jury: We would like a list of the 34 porn files with

04:19:36 7 dates and files names excluding other files signed by --

04:19:50 8 it looks like Daniel somebody or other.

04:19:56 9 Tom, first of all, do you know what they're

04:19:58 10 talking about? It's not an exhibit, is it?

04:20:01 11 MR. SECOR: It's in the FTK disk exhibit,

04:20:07 12 that information.

04:20:08 13 THE COURT: So we would have to open up the

04:20:10 14 disk?

04:20:14 15 MR. SECOR: What you'd have to do if you did

04:20:16 16 it that way is you'd have to -- you'd have to bring the

04:20:22 17 agent over and have it played, or I'm told that the one

04:20:31 18 agent, Morford, who testified can print this information

04:20:34 19 out and it can go in as, I don't know, a supplemental.

04:20:43 20 THE COURT: Exhibit whatever that disk is,

04:20:50 21 portion or whatever?

04:20:51 22 MR. SECOR: Correct.

04:20:52 23 THE COURT: But the information actually has

04:20:58 24 been admitted, even though it's not instantly apparent

04:21:02 25 or accessible?



04:21:04 1 MR. SECOR: Exactly. Now, also I'm told  
04:21:07 2 that it's in Vassel's report.

04:21:14 3 MS. KELLEY: It's an attachment labeled  
04:21:16 4 "Undercover Files on PC." It's six pages.

04:21:20 5 THE COURT: Did his report go in?

04:21:22 6 MS. KELLEY: Only portions. And then also  
04:21:24 7 in --

04:21:25 8 THE COURT: Was this part of it?

04:21:26 9 MS. KELLEY: This was not one of the ones  
04:21:29 10 that went in. But this was one of his attachments.  
04:21:32 11 Then I prepared, based on that, just a one-paragraph --  
04:21:39 12 if Amy -- Amy offered to scan that.

04:21:46 13 THE COURT: Tom, which is easier, scan or  
04:21:49 14 fax?

04:21:50 15 MR. SECOR: Unfortunately we are at Real  
04:21:53 16 Seafood right now finishing lunch.

04:21:57 17 THE COURT: You should have stayed in the  
04:21:59 18 building; we had our picnic today.

04:22:05 19 MS. KELLEY: I didn't think it proper to  
04:22:08 20 fraternize with you at the picnic.

04:22:12 21 THE COURT: I wouldn't have paid attention  
04:22:14 22 to you; those are my friends down there.

04:22:18 23 MR. SECOR: We can leave here in five  
04:22:20 24 minutes and be there in probably 15.

04:22:23 25 THE COURT: If you want to see it, I'm sure

04:22:26 1 that what Elizabeth has done is probably very sensible  
04:22:30 2 because what you've done basically is they didn't want  
04:22:33 3 the names, right? They do want the names?

04:22:36 4 MS. KELLEY: And what I might suggest is if  
04:22:39 5 my list goes to the jury, that that -- or this just be  
04:22:46 6 redacted.

04:22:50 7 THE COURT: Why don't we just give them  
04:22:52 8 this. Tom, wait a minute. Why don't I just send --  
04:22:57 9 well, you probably should be here. I'll wait.

04:23:00 10 MR. SECOR: I think, yeah, I should be  
04:23:02 11 there.

04:23:03 12 THE COURT: Okey-doke.

04:40:41 13 (Recess taken at 1:03 p.m.)

04:41:54 14 (Reconvened in the courtroom at 1:22 p.m.)

04:41:54 15 THE COURT: Here's what she's suggesting be  
04:41:56 16 sent back; is that correct, Ms. Kelley?

04:41:59 17 MS. KELLEY: I shared a copy with the  
04:42:00 18 government.

04:42:01 19 THE COURT: Let me, for the record, we  
04:42:03 20 received a question at 12:49 this afternoon: We would  
04:42:07 21 like a list of the 34 porn files with the dates and file  
04:42:15 22 names excluding other files. It's signed by -- I'm not  
04:42:21 23 sure which juror is the foreman; Daniel --

04:42:32 24 THE CLERK: Cobb.

04:42:36 25 THE COURT: And you would suggest, Ms.

04:42:38 1 Kelley, that perhaps we should mark this as simply  
04:42:44 2 exhibit --

04:42:46 3 MS. KELLEY: I had suggested a couple  
04:42:49 4 things. First of all, Your Honor, we could either  
04:42:53 5 submit the attachment from Mr. Vassel's report labeled  
04:42:58 6 "Undercover Files." That addresses their issues of  
04:43:03 7 date, time, and name. Or for purposes of brevity, that  
04:43:09 8 particular document which I prepared, however that  
04:43:12 9 particular document omits the file names.

04:43:15 10 THE COURT: I would assume they want to see  
04:43:17 11 the file name. They asked for that expressly.

04:43:21 12 MS. KELLEY: So I would suggest Mr. Vassel's  
04:43:24 13 attachment.

04:43:25 14 THE COURT: Should we -- I can tell them  
04:43:30 15 that this is -- why don't I simply: In response to your  
04:43:35 16 request, please see attached Exhibit 201, just for the  
04:43:40 17 record. Is that okay?

04:43:43 18 MR. SECOR: However you want to do it,  
04:43:44 19 Judge. I don't see that you need to bring them back in.  
04:43:47 20 Just send this in.

04:43:57 21 THE COURT: Do we need a copy?

04:44:00 22 MS. KELLEY: It should be a six-page copy,  
04:44:03 23 "Undercover Files found on PC."

04:44:34 24 THE COURT: Should I put on it this is a  
04:44:36 25 portion of Mr. Vassel's report which was not previously

04:44:39 1 introduced into evidence?

04:44:41 2 MS. KELLEY: Yes, please.

04:44:45 3 MR. SECOR: I don't really have an  
04:44:47 4 objection, but I don't know that it needs to be  
04:44:51 5 identified. They're only looking for a list.

04:44:54 6 THE COURT: I'll just leave it as is.

04:44:57 7 MR. SECOR: I'm reluctant to add anything to  
04:45:03 8 what they asked for.

04:45:09 9 THE COURT: Okay. It's 1:27, and today's  
04:45:14 10 the 9th.

04:45:25 11 I won't send back the single sheet.

04:45:29 12 Joint exhibit; any objection?

04:46:34 13 Something occurs to me -- I'll try to speak  
04:46:49 14 loudly. Do the jurors tell you before they take a  
04:46:56 15 recess or adjourn?

04:47:01 16 THE CLERK: They do.

04:47:01 17 THE COURT: Because there are so many of the  
04:47:04 18 defendant's family and friends and other spectators, and  
04:47:08 19 you really should not have any contact of any kind with  
04:47:11 20 the jurors.

04:47:12 21 Amy, when the jurors notify you that they're  
04:47:16 22 taking a recess, do you folks -- do they wait out in the  
04:47:21 23 lobby here?

04:47:23 24 THE CLERK: When the jurors took their  
04:47:25 25 break, they went down to the first floor.

04:47:27 1 THE COURT: Otherwise -- I'm sure nothing  
04:47:30 2 improper may occur; it just might be awkward for you or  
04:47:34 3 the jurors. I wouldn't want that. I'm not suggesting  
04:47:36 4 there would be any improper contact, it's just being  
04:47:41 5 proximate to each other. When we have our new  
04:47:46 6 courthouse 50 years from now that won't be a problem,  
04:47:51 7 and I won't have to walk through the corridors, which  
04:47:56 8 also sometimes creates an awkward moment. Nor will we  
04:48:00 9 be bringing prisoners through the corridors either.

04:48:00 10 (Adjourned at 1:28 p.m.)

04:48:00 11 - - -

06:32:23 12 (Reconvened at 3:15 p.m.)

06:32:27 13 (Jury enters the courtroom.)

06:34:16 14 THE COURT: Ladies and gentlemen, I  
06:34:17 15 understand you have a verdict. And if you do, will the  
06:34:21 16 foreperson please hand the verdict form to the clerk.

06:34:38 17 The clerk will read the verdict.

06:34:43 18 THE CLERK: In the United States District  
06:34:45 19 Court for the Northern District of Ohio, Western  
06:34:48 20 Division. United States of America, plaintiff, versus  
06:34:51 21 Alex D. Cook, defendant. Case number 3:10-CR-522.

06:34:56 22 Verdict: We, the jury, on the issues joined,  
06:35:00 23 unanimously find as to Count 1: Guilty.

06:35:04 24 As to Count 2: Guilty.

06:35:06 25 As to Count 3: Guilty.

06:35:09 1 Signed by all 12 jurors.

06:35:12 2 THE COURT: Do you want the jury polled?

06:35:15 3 MS. KELLEY: Yes, please, Your Honor.

06:35:17 4 THE COURT: Is that your verdict, Mr. Cobb?

06:35:20 5 Is that correct? I'm going to ask each of you. Is that  
06:35:25 6 your verdict?

06:35:26 7 THE JUROR: Yes, sir.

06:35:26 8 THE COURT: Is that your verdict?

06:35:28 9 THE JUROR: Yes, it is.

06:35:28 10 THE COURT: Is that your verdict?

06:35:29 11 THE JUROR: Yes.

06:35:29 12 THE COURT: Is that your verdict?

06:35:30 13 THE JUROR: Yes.

06:35:31 14 THE COURT: And is that your verdict?

06:35:32 15 THE JUROR: Yes.

06:35:33 16 THE COURT: The second lady from the end?

06:35:35 17 THE JUROR: Yes.

06:35:36 18 THE COURT: Is that your verdict?

06:35:38 19 THE JUROR: Yes.

06:35:38 20 THE COURT: Is that your verdict?

06:35:39 21 THE JUROR: Yes.

06:35:40 22 THE COURT: Is that your verdict?

06:35:40 23 THE JUROR: Yes.

06:35:41 24 THE COURT: Is that your verdict?

06:35:42 25 THE JUROR: Yes.

06:35:43 1 THE COURT: Is that your verdict?

06:35:44 2 THE JUROR: Yes.

06:35:45 3 THE COURT: Is that your verdict?

06:35:46 4 THE JUROR: Yes.

06:35:46 5 THE COURT: The jurors have been polled.

06:35:51 6 The unanimity of the verdict will be accepted for

06:35:54 7 filing.

06:35:55 8 Ladies and gentlemen, your service in this  
06:35:56 9 case obviously has come to an end. If you could wait  
06:36:00 10 for a few minutes I would like to speak with you just  
06:36:03 11 briefly about your service and get whatever feedback you  
06:36:07 12 may want to give to me, particularly about how things  
06:36:11 13 could have been better for you. I said at the outset of  
06:36:14 14 the trial and I will say now, I will say in a moment  
06:36:18 15 that I sincerely hope that you leave your experience, as  
06:36:24 16 difficult as it no doubt has been for each and every one  
06:36:28 17 of you and for all of you collectively, with a better  
06:36:31 18 understanding of our jury system and how it works and  
06:36:35 19 how it protects the rights of all our citizens. I said  
06:36:39 20 at the outset and will repeat again because I feel it as  
06:36:43 21 strongly as I feel anything about the law that the  
06:36:46 22 rights of all of us are for more secure in the hands of  
06:36:50 23 12 ordinary citizens than they would ever be in my own  
06:36:55 24 hands or that of any other elected or appointed judge.  
06:37:00 25 Ours is a practically unique system of justice in that

06:37:03 1 we retain the 12-person jury in criminal cases. And I  
06:37:07 2 have absolutely no doubt that it is the best system ever  
06:37:10 3 devised to insure fair and equal justice based upon the  
06:37:15 4 facts and the law. Thank you for your service, and you  
06:37:18 5 may adjourn to the jury room.

06:38:00 6 (Jury exits the courtroom.)

06:38:03 7 THE COURT: Mr. Cook, you will be required  
06:38:05 8 to report to the Pretrial Service and Probation Office  
06:38:08 9 to commence a presentence investigation. That will  
06:38:12 10 begin with an interview with a probation officer. You  
06:38:18 11 have the right to have Ms. Kelley with you at that and  
06:38:22 12 any other investigation for the pretrial investigation.  
06:38:27 13 That process usually takes about ten weeks. Ms. Kelley  
06:38:31 14 will receive a copy of the presentence report, a  
06:38:33 15 preliminary copy of the initial disclosure, and she will  
06:38:37 16 review that with you and call to the attention of the  
06:38:41 17 probation officer any corrections or changes that should  
06:38:43 18 be made, and likewise if there are any objections to the  
06:38:47 19 computation of the sentence under the Federal Sentencing  
06:38:51 20 Guidelines. Sentencing will occur a few weeks after  
06:38:57 21 that. Does the government have any objection if I were  
06:39:02 22 to continue the same conditions of pretrial release?

06:39:11 23 MR. SECOR: No, Your Honor.

06:39:13 24 THE COURT: Mr. Cook, I will permit you to  
06:39:15 25 remain free under the same conditions, terms and



06:39:20 1 conditions of pretrial release that you have complied  
06:39:23 2 with successfully so far. I simply want to caution you  
06:39:26 3 that as frightful as the prospect of imprisonment will  
06:39:34 4 be, and imprisonment is very likely; I believe there's a  
06:39:38 5 mandatory minimum term; is that correct?

06:39:39 6 MR. SECOR: There is, Your Honor.

06:39:40 7 THE COURT: Nonetheless, failure to appear  
06:39:43 8 or otherwise fail -- other failure to comply with each  
06:39:47 9 and all the conditions of pretrial release will simply  
06:39:51 10 create conditions and circumstances every bit as grave  
06:39:56 11 as those with which you are now confronted. Most simply  
06:40:02 12 put, in today's computerized age, it is impossible for a  
06:40:10 13 person to successfully permanently and successfully to  
06:40:13 14 avoid reapprehension in the event that he absconds from  
06:40:20 15 conditions of pretrial release. And I simply want to  
06:40:25 16 caution you about that.

06:40:29 17 Anything further from the government?

06:40:31 18 MR. SECOR: No, Your Honor.

06:40:31 19 THE COURT: Ms. Kelley?

06:40:33 20 MS. KELLEY: No, Your Honor.

06:40:34 21 THE COURT: Some of the jurors may want to  
06:40:36 22 talk to counsel afterwards. I don't know. I'm going to  
06:40:39 23 meet with them for probably five or ten minutes. If you  
06:40:42 24 wish to talk to the jurors, you may remain in the  
06:40:45 25 courtroom. I would ask the courtroom otherwise in due

06:40:49 1 course be cleared.

06:40:51 2 That will conclude this proceeding.

3 (Concluded at 3:21 p.m.)

4 - - -

5

6 **C E R T I F I C A T E**

7

8 I certify that the foregoing is a correct transcript  
9 from the record of proceedings in the above-entitled  
10 matter.

11

12 /s Tracy L. Spore \_\_\_\_\_

13 Tracy L. Spore, RMR, CRR

\_\_\_\_\_

Date

14

15

16

17

18

19

20

21

22

23

24

25